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 1   UNITED STATES BANKRUPTCY COURT
              FOR THE WESTERN DISTRICT OF NORTH CAROLINA
 2   CHARLOTTE DIVISION

 3

 4   IN RE:)
)
 5   GARLOCK SEALING TECHNOLOGIES   )
      LLC, et al,   )   No. 10-BK-31607
 6   )
           Debtors.   )   VOLUME XI-A
 7   _____)   MORNING SESSION

 8
                    TRANSCRIPT OF ESTIMATION TRIAL
 9   BEFORE THE HONORABLE GEORGE R. HODGES
               UNITED STATES BANKRUPTCY JUDGE
10   AUGUST 5, 2013

11

12   APPEARANCES:

13   On Behalf of Debtors:

14   GARLAND S. CASSADA, ESQ.
           Robinson Bradshaw & Hinson, PA
15   101 North Tryon Street, Suite 1900
           Charlotte, North Carolina 28246
16
           JONATHAN C. KRISKO, ESQ.
17   Robinson Bradshaw & Hinson PA
           101 North Tryon Street, Suite 1900
18   Charlotte, North Carolina 28246

19   LOUIS ADAM BLEDSOE, III, ESQ.
           Robinson Bradshaw & Hinson PA
20   101 North Tryon Street, Suite 1900
           Charlotte, North Carolina 28246
21
           RICHARD C. WORF, ESQ.
22   Robinson Bradshaw & Hinson, PA
           101 North Tryon Street, Suite 1900
23   Charlotte, North Carolina 28246

24

25
</pre>

```
 1   APPEARANCES (Continued.):

 2   On Behalf of Interested Parties:

 3   Carson Protwall LP:

 4        JULIE BARKER PAPE, ESQ.
          Womble Carlyle Sandridge & Rice, PLLC
 5        P.O. Drawer 84
          Winston-Salem, North Carolina 27102
 6
     Coltec Industries Inc.:
 7
          DANIEL GRAY CLODFELTER, ESQ.
 8        Moore & Van Allen, PLLC
          100 North Tryon Street, Suite 4700
 9        Charlotte, North Carolina 28202-4003

10        HILLARY B. CRABTREE, ESQ.
          Moore & Van Allen, PLLC
11        100 North Tryon Street, Suite 4700
          Charlotte, North Carolina 28202-4003
12
          MARK A. NEBRIG, ESQ.
13        Moore & Van Allen, PLLC
          100 North Tryon Street, Suite 4700
14        Charlotte, North Carolina 28202-4003

15        EDWARD TAYLOR STUKES, ESQ.
          Moore & Van Allen, PLLC
16        100 North Tryon Street, Suite 4700
          Charlotte, North Carolina 28202-4003
17
     Creditor Committees:
18
     Official Committee of Asbestos Personal Injury Claimants:
19
          LESLIE M. KELLEHER, ESQ.
20        Caplin & Drysdale, Chartered
          One Thomas Circle NW, Suite 1100
21        Washington, DC 20005

22        JEANNA RICKARDS KOSKI, ESQ.
          Caplin & Drysdale, Chartered
23        One Thomas Circle NW, Suite 1100
          Washington, DC 20005

24

25
```

```
 1   APPEARANCES (Continued.):

 2   Official Committee of Asbestos Personal Injury Claimaints:

 3        RICHARD S. WRIGHT, ESQ.
          Moon Wright & Houston, PLLC
 4        226 West Trade Street, Suite 1800
          Charlotte, North Carolina 28202
 5
          ANDREW T. HOUSTON, ESQ.
 6        Moon Wright & Houston, PLLC
          227 West Trade Street, Suite 1800
 7        Charlotte, North Carolina 28202

 8        SCOTT L. FROST, ESQ.
          Waters Kraus, LLP
 9        222 North Sepulveda Boulevard, Suite 1900
          El Segundo, California 90245
10
          JONATHAN A. GEORGE, ESQ.
11        Waters Kraus, LLP
          3219 McKinney Avenue
12        Dallas, Texas 75204

13   Future Asbestos Claimaints:

14        KATHLEEN A. ORR, ESQ.
          Orrick, Herrington & Sutcliffe, LLP
15        1152 15th Street, N.W., Columbia Center
          Washington, DC 20005-1706
16
          JONATHAN P. GUY, ESQ.
17        Orrick, Herrington & Sutcliffe, LLP
          1152 15th Street, N.W., Columbia Center
18        Washington, DC 20005-1706

19   Official Committee of Unsecured Creditors:

20        DEBORAH L. FLETCHER, ESQ.
          FSB Fisher Broyles, LLP
21        6000 Fairview Road, Suite 1200
          Charlotte, North Carolina 28210
22

23

24

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1   P R O C E E D I N G S

2   AUGUST 5, 2013, COURT CALLED TO ORDER 9:30 A.M.:

3   THE COURT: I think we are ready for the

4   cross-examinations.

5   MR. INSELBUCH: Yes, Your Honor. Elihu Inselbuch

6   from Caplin and Drysdale for the Committee.

7   CROSS EXAMINATION

8   BY MR. INSELBUCH:

9   Q.   Good morning, Dr. Bates.

10 A.   Good morning, Mr. Inselbuch. Can you hear this?

11 Q.   It would help me if you talked up a little bit. My old

12 ears don't hear so --

13 A.   I'll get it positioned here properly. I think that will

14 help.

15 Q.   Thank you.

16   MR. INSELBUCH: Your Honor, is it all right if I do

17 this from the table?

18   THE COURT: Sure.

19 BY MR. INSELBUCH:

20 Q.   The estimation technique that you've adopted here, the

21 methodology, has only been used by your firm once before; is

22 that correct?

23 A.   Well, I'm not sure what you mean by that. The general

24 approach that I'm using here, uses well-established methods

25 and procedures. There's particular elements of the task here

1   which are new in some elements of it. There are overlaps to

2   some degree with most of the different ways in which we've

3   done estimates in the past. Including ones before with regard

4   to -- perhaps what you're referring to is the approach that

5   was used in Bondex to attempt to separate out liability from

6   cost avoidance payments.

7   Q.   Well, that's what --

8   A.   But I think if you think about it more broadly, there are

9   estimates that have been done that have focused on --

10   primarily on the estimation of the liability portion. But

11   that's, you know, in a different context where the data was

12   somewhat different, but --

13   Q.   Well, apart from whether the data is different in Bondex

14   and here, you do an estimation that attempts to estimate what

15   you have described and what the debtor has described as the

16   liability of the debtor derived from predicted or anticipated

17   results at trial, correct?

18   A.   I think that's substantially correct, in that there

19   are -- the focus of the estimate is to attempt to distinguish

20   between what is the cost avoidance part of settlements versus

21   what is the liability portion of settlements and they both

22   draw on the same literature of law and economics of how those

23   elements are defined in relation to each other, yes.

24   Q.   Right. But I'm correct that you've only done this before

25   in Bondex and here?

1   A.   Done that before? You mean try and distinguish the two

2   pieces?

3   Q.   Yes.

4   A.   Yes. Those are the two places where we tried to

5   distinguish that in a situation where we didn't have direct

6   observations on that.

7   Q.   And in Bondex the methodology was rejected by Judge

8   Fitzgerald, was it not?

9   A.   Well, she certainly ruled that the number was much

10 higher. Well, I guess she did say she disagreed, but she

11 didn't say why. So, I guess that's what you mean by that,

12 yeah.

13 Q.   Well, in your deposition you were asked at page 338 line

14 9:

15   "Did the court in the Bondex case accept Dr. Mullin's

16 approach?

17   A.   Let's just say no."

18 A.   That's what I said, yes.

19 Q.   All right. So before you developed these approaches, you

20 did financial forecasting for EnPro and Garlock, did you not?

21 A.   Yes, I did.

22 Q.   And you did it for a number of other companies, as well?

23 A.   Correct.

24 Q.   And you still do it for other companies, do you not?

25 A.   Correct.

1 Q.   And can you describe to the court what the difference was

2 in the way you did those estimations for financial reporting

3 from the way you've done the estimation here?

4 A.   Well, I think, you know, as I described in my direct,

5 essentially using the model that we have on relationship

6 between liability and settlements and determining each. The

7 focus of the -- the estimation is on two different components

8 of that model. In one, which are the settlements. And in the

9 case of financial reporting, you're trying to estimate the

10 expenditure of the company, that is essentially a loss

11 provision for financial recording purposes. Which includes

12 both the liability portion, the portion that is paid to cover

13 cost avoidance, as well as the direct cost, in many cases for

14 what is the defense costs that are accrued.

15   So essentially they're two different things. I think

16 your question was, you know, what was different about how we

17 estimate it and how we estimated it.

18   In the one case we used the settlement history as a

19 historical record of what was spent. We then do analysis

20 about how that history is representative about the period

21 we're forecasting into. The degree of uncertainty about what

22 that is. The relationship between what we expect the future

23 time period and litigation environment to be, relative to what

24 we observed in the past.

25   And so, for example, in the case of EnPro, we look at the

1   recent history, and we look at the more distant history. We

2   use both of those pieces to essentially create scenarios which

3   show what we think is essentially the transition in the

4   litigation environment into the future as the litigation

5   environment will unfold as essentially what we called here the

6   information regime changes, essentially as the trusts come on

7   line, the defense posture of Garlock matures, and where we

8   know going into the future, litigation environment looks

9   somewhat different than the present.

10   So that in summary is the fundamental differences between

11 them.

12 Q.   Now when you were asked to do those financial reporting

13 forecasts -- forecasts with financial reporting, did you

14 discuss with your clients whether or not they would want you

15 to separate out what we call here "legal liability" from

16 "financial statement responsibility"?

17 A.   No. I mean, that's not a relevant consideration when

18 you're doing the financial reporting forecast. It's a

19 financial forecast. It's not a legal liability forecast.

20   It certainly was there within the context of our

21 discussions that -- but there wasn't a separate analysis for

22 it because there was no purpose to it.

23 Q.   Is it -- would it be fair to say though, what they wanted

24 to know was what you thought Garlock would spend associated

25 with their claims, how many of them they would expect to get

1 | in the future, and what they would expect to have to pay to

2 | get rid of them?

3 | A.   Well, I'm not sure what you mean by, "I thought". I

4 | mean, it's essentially my estimate of what that expenditure

5 | would be.

6 | Q.   Well, you don't think that's what they wanted you to do?

7 | A.   They wanted -- they wanted me to provide them an estimate

8 | of what I thought their -- what I estimated their future

9 | expenditure to be, and to provide them my estimates of what

10 | that future expenditure would be, because they needed as their

11 | accountants required, estimates of their books for this

12 | potential contingent loss.

13 | Q.   So they wanted to know how many of them they would expect

14 | to get in the future and what they would expect to have to pay

15 | to get rid of them; is that fair?

16 | A.   From the standpoint of what would they pay, vis-a-vis the

17 | defense posture that they take, to basically get out of the

18 | litigation, yes.

19 | Q.   So that's a fair description?

20 | A.   It's an accounting notion of what the expenditure was,

21 | yes --

22 | Q.   I wasn't asking you whether it's an accounting notion.

23 | I'm asking you if that's what your clients wanted you to tell

24 | them.

25 | A.   They wanted an estimate of what the expenditure was

1 likely to be -- what they would likely have to spend in the

2 future, because it's required for their -- an estimate of the

3 expenditure was required by their accountants for financial

4 reporting purposes.

5 Q.   Now the financial forecasts don't include defense costs,

6 does that?

7 A.   That depends how it's treated on the books. Some --

8 Q.   How did they treat it on the books?

9 A.   As I sit here right now, I don't recall. I believe they

10 may have put their own estimate of the defense cost portion.

11 I wasn't involved in that portion.

12 Q.   You didn't estimate their defense costs?

13 A.   No, I did not estimate EnPro -- the -- Garlock's defense

14 cost for EnPro's financial reporting.

15 Q.   You estimated how many claims they would get and how much

16 it would cost to get rid of them?

17 A.   I estimated the expenditure associated with payments to

18 claimants to essentially resolve the claims.

19 Q.   All right. And you did this on a quarterly basis

20 beginning the end of -- for the quarter ending December 31,

21 2004, right up until the time they -- Garlock filed Chapter

22 11, did you not?

23 A.   Yes. The last estimate was December, 2009.

24   MR. INSELBUCH: Your Honor, these -- I want to offer

25 these estimates that he did. These are confidential. As a

1   result, I don't intend to put them up and display them. But I

2   would like to have them in front of the witness and in front

3   of the court.

4   THE COURT: All right.

5   MR. INSELBUCH: We can discuss them as necessary,

6   with the idea that they would remain under the court's order,

7   confidential.

8   THE COURT: All right.

9   MR. INSELBUCH: That way we can avoid closing the

10 courtroom.

11   MR. CASSADA: Your Honor, I would like to remind the

12 court, we have the continuing objection here --

13   THE COURT: I understand.

14   MR. CASSADA: Used for purposes of establishing the

15 validity --

16   THE COURT: Yes.

17   MR. CASSADA: Also, we don't object to displaying

18 the information on the board, if that would make the

19 examination more expeditious.

20   THE COURT: Okay, that's fine.

21 BY MR. INSELBUCH:

22 Q.   Okay. Well, let's take a look at -- I'm just going to

23 show you the annual one. Because I'm correct, am I not, that

24 it was the material from your -- the end of the year reports

25 that you did that wound up in the financial statements?

1 A.   Yes, I believe that's correct.

2 Q.   So we'll focus on those.

3   MR. INSELBUCH: So we would -- would Your Honor like

4 to have them up on the bench or not? You can watch them on

5 the screen.

6   THE COURT: We can see them on the screen. That's

7 fine.

8   MR. INSELBUCH: Okay. Fine.

9 Q.   Let's first look at what's been marked as ACC 133.

10   Can we do better than that?

11 A.   Please.

12   MR. INSELBUCH: Can we do better than that? If not,

13 we'll have to work with the paper.

14   Charlie, can you see it? Excuse me, Dr. Bates.

15   THE WITNESS: It's a little bit fuzzy but I can make

16 it out. It's fine.

17   MR. INSELBUCH: We're not going to read every word.

18 Q.   I just would like to focus here on the estimate that you

19 made provided a range, did it not, of where the liability

20 might run?

21 A.   Yes. The approach that we used created alternative

22 scenarios based on what we thought the potential impact of

23 trusts coming online would have on the future expenditures.

24 Q.   And you were estimating for nonmalignant claims and

25 malignant claims, were you not?

1 A.   Yes.

2 Q.   And you were estimating nonmalignant claims for shorter

3 periods of time than malignant claims?

4 A.   Yes.

5 Q.   That's because there was -- you thought there was more

6 uncertainty about the nonmalignant claims?

7 A.   Well, there were two types of nonmalignant claims. There

8 essentially were the claims that we treated them as what we

9 would call "medical nonmalignant claims", versus what we

10 called "recruited nonmalignant claims".

11   The recruited nonmalignant claims had a -- considered

12 alternatives to that which had different durations other than

13 medical claims that we forecast out over a longer period of

14 time, equivalent to what we did with the cancers.

15 Q.   How many years did you project and estimate nonmalignant

16 claims?

17 A.   Well, for the medically driven ones, they went the

18 duration of the estimate equivalent of the cancer claims. For

19 the recruited ones, they simply went for a period of two

20 years.

21 Q.   Did you say that in your report?

22 A.   What report? You mean in this letter?

23 Q.   Well, the Exhibit ACC 133.

24 A.   No. In this letter? No, that's a detail. It's in the

25 model, though, that --

1   Q.   In any event, you say in here that you're estimating --

2   this is as of the end of 2004. You're estimating nonmalignant

3   claims through 2008 and cancer claims through 2014?

4   A.   Basically, yes.

5   Q.   And the estimate to that period, the range is between

6    $226.5 million to $382.4 million?

7   A.   In dollars of the day. So these are not present value

8   numbers.

9   Q.   In dollars of the day?

10   A.   Right.

11   Q.   But you're only estimating out for 10 years for the

12   malignants?

13   A.   Correct.

14   Q.   And did this material find its -- did this estimate find

15   its way, to your knowledge, into the EnPro financial

16   statements?

17   A.   Yes, that's my understanding of it.

18   Q.   All right. Now we have ACC 20 -- don't put these up on

19   the board, ACC 287, ACC 291, and ACC 293 and finally ACC 144.

20   ACC 144 is the last one you did. This was done in

21   February of 2010, and it was for the year ending 2009. And

22   this is shortly before Garlock went into Chapter 11, correct?

23   A.   That's my recollection.

24   MR. INSELBUCH: Now the exhibit, Your Honor,

25   consists of two pieces of paper.

                    Laura Andersen, RMR 704-350-7493

1   MR. CASSADA: Excuse me. A couple times you are

2 talking over the witness.

3   MR. INSELBUCH: I beg your pardon.

4   MR. CASSADA: Be sure to get his full answer in.

5   MR. INSELBUCH: I beg your pardon. I will try not

6 to do that.

7 Q.   The exhibits after ACC 133, each year's exhibits consists

8 of two documents, as we've marked them, Your Honor. One is

9 Dr. Bates' estimate, and then with it an internal review

10 memorandum done by Mr. Grant and Mr. Magee, which reflects

11 their acceptance of the estimate. But I'm only going to ask

12 Dr. Bates about his portion of them.

13   Could we have then the second page of ACC 144. This

14 shows that this is again your letter to Mr. Magee dated

15 February 2, 2010, correct? And if we look down in the second

16 paragraph we see your estimate, right? And again, you're

17 estimating the nonmalignant claims for two years and the

18 cancer claims and the medically driven nonmalignant claims for

19 10 years, correct?

20 A.   Correct.

21 Q.   And the estimate was $480 million to $602 million?

22 A.   This is the portion of the overall range which we

23 estimate is described in the next paragraph.

24 Q.   Right --

25 A.   Which is --

1   Q.   In fact the range -- I beg your pardon. The range is

2   broader than that, is it not?

3   A.   The range we estimated is broader than that. Same as the

4   first one. If we had looked at both paragraphs, we would have

5   seen that there was a narrow range, which we have done an

6   analysis on which we described as the equally likely range,

7   which is more likely than the broader range.

8   So essentially we have through the scenarios that we've

9   created, a broader range of estimates that come out of the use

10   of the model. And then within that we've done -- essentially

11   formed some judgment about what portion of this is more likely

12   than others.

13   And that's addressing, essentially, what comes out of the

14   accounting provision requirements that when you have a range

15   of -- outcomes which you cannot distinguish between the most

16   likely, you identify that range if you can.

17   Q.   So what you're telling us is that it was your view that

18   the more likely range was $480 million to $602 million?

19   A.   In dollars of the day, yes.

20   Q.   In terms -- I'm sorry.

21   And then you provided what we call a spot estimate, did

22   you not?

23   A.   At this time, yes.

24   Q.   And if you go down two paragraphs --

25   A.   I think I know what you mean by spot estimate.

1   Q.   You say --

2   A.   Not sure that's the language I used.

3   Q.   "I understand that EnPro's management sets indemnity

4   payment targets for its counsel. Management target for the

5   next 10 years is $485 million."

6   And basically you say that's a fair number to put in

7   their financial statements, is that --

8   A.   That's correct. Based on our history of working with

9   them by this time and understanding what they were doing with

10   their budgets, the way they formulated them, and our analysis

11   of the outcome and --

12   Q.   So somehow then --

13   MR. CASSADA: I'm not sure he finished his answer.

14   MR. INSELBUCH: I beg your pardon.

15   Dr. Bates, you'll help me if you keep your voice up.

16   I don't hear that you're still talking. I don't want to talk

17   over you.

18   THE WITNESS: Excuse me. I thought I was.

19   So, I mean, essentially, based on our history of

20   working with EnPro and its management, understanding how they

21   formulated their budget, their description of that, as well as

22   how we formulated our estimate, and somewhat the extent to

23   which they had some degree of flexibility of when they made

24   some payments across year-end, it made that the element -- to

25   the extent that they were within the range of their budgets,

1 it made their budget amount more likely than other amounts.

2 Q.   So basically it was more likely that the cases would come

3 in over the 10-year period for what the client said they would

4 pay for them, than any other number in the range?

5 A.   That's a misrepresentation of what I said, Mr. Inselbuch.

6   It is, essentially when they're forming their budgets,

7 they're considering what it is that they expect to pay from

8 their history. Also what it is that we have described to

9 them, what the likely future would look like.

10   So there was a lot of back and forth over what it was

11 that we were expecting -- we were estimating would occur.

12   And by my understanding, is they were taking account of

13 many of the same considerations we were. We were doing it in

14 a sort of model-based analytical way. They were doing their

15 own analysis of what that is.

16   And they have a small degree -- well, some degree of

17 flexibility of which was -- of where they formed -- of which

18 particular -- of the timing of payments right around year-end.

19 Given to the extent that those budgets were formulated with

20 similar sets of expectations, that's not surprising.

21 Q.   So it was your understanding that they were doing a

22 parallel analysis of their own?

23 A.   Well, they were doing a budgeting analysis so they

24 could -- which requires them to have a good understanding of

25 what kinds of expenses they were facing. We learned about

1   those expectations. It's similar in many respects to

2   addressing what the claims were; the body of claims that they

3   have; the timing of when claims have to be resolved facing

4   litigation. So there's a lot of parallels in that.

5   Q.   But still it's a budgeting analysis. They told you we

6   budgeted $485 million. And you said, that's what you

7   budgeted. That's probably where it will come out -- that's

8   the most likely place it will come out?

9   A.   Well, I think based on this discussion, it's obvious

10   that's a rather large oversimplification of what I described.

11   We have a range which is formed on the analysis of the

12   history; the number of claims that they have; what we see as

13   the likely transition -- the timing of the transition of the

14   litigation environment. And to the extent that within that

15   range, which we consider to be equally likely, there is a

16   budgeted amount that makes that budget amount somewhat more

17   likely than the others. That's the standard in the accounting

18   principle.

19   Q.   You do the same kind of spot estimate for your other

20   clients?

21   A.   Depends on the circumstance and how their accountants

22   want to essentially account for the expenditure within their

23   financial reporting statements.

24   Q.   Did you authorize EnPro to quote your material in their

25   financial statements?

1   A.   Yes. We signed a statement to that effect, each year.

2   Q.   That's required under the securities law; isn't it?

3   A.   I'm not familiar with that requirement. We signed it.

4   Other clients have us sign that as well, so we do that.

5   Q.   Did you look at the filings that EnPro made under its

6   form 10K annually to see that they accurately described what

7   you had to say?

8   A.   Yes.

9   MR. INSELBUCH: So we have Your Honor, ACC 18, 19,

10   156, 149, 150. These are the -- in order, the EnPro 10K forms

11   for the years ending, 2004, 2005, 2006, 2007, 2008, 2009.

12   Mr. Sackett tells me I missed one. 621 -- ACC 621

13   which is 2008.

14   And let's look first at the first one in 2005, ACC

15   18. And we want to look at page 28. And on page 28, three

16   paragraphs up from the bottom. We see the name of Bates

17   White. Let me just read this, Your Honor, because it's

18   difficult.

19   "Bates White -- our outside counsel retained the

20   expert claims valuation firm Bates White to review Garlock's

21   product history, historical claims information and settlement

22   experience, and to assist and advise in connection with the

23   management of Garlock asbestos claims, and our estimation of

24   Garlock's liability for pending and reasonably estimable

25   unasserted future asbestos claims. We received an opinion

1 | from Bates White dated February 17, 2005 to the effect that

2 | Garlock's cancer claims through 2014" -- I'm sorry I skipped a

3 | line.

4 | -- "to the effect that based on the range of events

5 | likely to transpire in the future, which are reasonably

6 | predicted for Garlock's nonmalignant claims through 2008, and

7 | for Garlock's cancer claims through 2014, the reasonable and

8 | probable estimate of Garlock's obligation for asbestos

9 | personal injury claims, ranges from $226.5 million to

10 | $382.4 million."

11 | That's the number that was in your report, correct?

12 | A.   Yes, that's my recollection.

13 | Q.   We saw that before?

14 | A.   Yes.

15 | Q.   They go on to say, I take it you read it at the time:

16 | "We have adopted the range predicted by our expert;

17 | however, we note that Bates White also indicated the

18 | calculation of the other potential estimates of Garlock's

19 | future obligation for the period of the estimation that ranged

20 | from $197.2 million to $553.5 million."

21 | That's the broad range that you reported?

22 | A.   Yeah.

23 | Q.   Right. And at the end of that paragraph they go on to

24 | say, "plausible scenarios exist that could result in a total

25 | asbestos-remaining liability of Garlock in excess of

1    $1 billion, consistent with the high end of management

2   estimates provided in the previous two quarters."

3   Do you see that?

4   A.   Yes. And they were using the term "liability" from an

5   accounting sense.

6   Q.   I'm sorry, I didn't hear what you said.

7   A.   They were using the term -- this is financial reporting

8   basis. We're using the word "liability" there in the

9   accounting sense. It's an amount that's going on the

10   liability portion of the balance sheet. So it's not to be

11   confused with the notion of Garlock asbestos liabilities.

12   Q.   I wasn't suggesting to confuse it. I'm just saying that

13   the number they put in was a billion dollars.

14   A.   Yes, there are scenarios -- presumably there are

15   scenarios which could occur.

16   Q.   Did you disagree with that at that time?

17   A.   No.

18   Q.   Now, if we go on, we can take each one of these in order.

19   2005, at page 34. This is exhibit ACC 19. And you'll see

20   they are parallel, are they not? They report your range?

21   They report your broader range, and they go on to conclude

22   that "plausible scenarios exist that could result in a total

23   remaining asbestos liability for Garlock in excess of

24   $1 billion" each time.

25   A.   Correct.

1 Q.   That was 2005?

2 A.   We have potential outcomes based on the calculation of

3 the models, where there are calculations and scenarios where

4 the expenditure could be over $1 billion in dollars of the

5 day, yeah.

6 Q.   And in 2006, if we put up ACC 156, and we look at page 90

7 and 91, we will see the same material.

8 A.   Correct.

9 Q.   Smaller range, the broader range, and the liability may

10 be as much as a billion dollars. And if we look -- correct?

11 A.   With the same caveat, yes.

12 Q.   And if we look at 2007, we'll see the same thing. If we

13 look at page 32 and 33, the range, the broader range and the

14 billion dollars. Yes?

15 A.   Yes, that scenario corresponds --

16 Q.   And 2008 --

17 A.   Excuse me.

18 Q.   2008, the same thing if we look at ACC 621. Except the

19 ranges are all getting bigger, aren't they? All of these

20 ranges are going higher?

21 A.   All of the ranges are getting higher?

22 Q.   That you're predicting. Each year the numbers get

23 bigger, your numbers get bigger?

24 A.   Well, not every year.

25 Q.   Well, overall they get bigger?

1   A.   There was a period in there where they stepped up, yes.

2   Q.   So we look at ACC 621, pages 33 and 34. We now have a

3   range -- this is for the year ending 2008. We have a range of

4    $431 million to $627 million reported, with the possibility

5   that it could be a billion dollars -- in excess of a billion

6   dollars.

7   And if we use the last part of that, Your Honor, on page

8   34 in the third paragraph down, the last line there it is.

9   Can you highlight that?

10   And finally the last one, 2009, ACC 150, the range now if

11   you look at page 96, the range now estimated is $480 million

12   to $602 million and the liability could be as much as a

13   billion dollars, that number we find on page 97. Yeah, on the

14   bottom of the first full paragraph. Last sentence. There it

15   is. There it is.

16   So that was the last range you estimated under accounting

17   principles, the range was $480 million to $602 million

18   projecting cancers for only 10 years. And as you say, that's

19   dollars of the day. Not discounted to present value. And

20   Garlock is still saying, could be more than a billion dollars,

21   correct?

22   A.   Yeah. These are consistent with the estimates that I

23   showed to the court the other day when I essentially recast

24   those same numbers in terms of just the mesothelioma portion

25   and took the present value of them, the upper end of that

1 range, as I reported, which was in net present value of 6- to

2 $700 million range, is consistent with the billion -- over

3 billion dollar estimate that I'm reporting here. So it's the

4 same estimates, simply recast in terms of present value and

5 looking only at the mesothelioma claims and then projecting it

6 out for 50 years. So they're the same scenarios.

7 Q.   And none of these estimates included defense costs?

8 A.   That's correct.

9 Q.   Now you told us that you looked at these financial

10 statements when they were published. And did you notice in

11 there a statement that EnPro made to the effect that they only

12 paid claims if there was proof of exposure to Garlock

13 products?

14 A.   Yes, that's the same principle we used in calculating the

15 Garlock asbestos liability numbers that we used here. Claims

16 that would assert -- they had to be able to assert and would

17 sign an affidavit at a minimum that they were asserting

18 contact with a Garlock product.

19 Q.   So there's a reference in every one of these, but if we

20 just looked at the last one to save a little time, ACC 150,

21 year-ending 2009 at page 94. I'm reading now under heading

22 "settlements", the third paragraph.

23   It says "Before any payment on a settled claim is made,

24 the claimant is required to submit a medical report acceptable

25 to Garlock, substantiating the asbestos-related illness and

1 meeting specific criteria of disability. In addition, sworn

2 testimony or other evidence that the claimant worked with or

3 around Garlock asbestos-containing products is required."

4   Are you aware of that?

5 A.   Yes, that's the principle which I used to reach my

6 estimate for the liability.

7 Q.   Did you have any reason to doubt that's what they were

8 doing?

9 A.   That's my understanding of what they were doing.

10 Q.   All right. Let's turn to some of the things you talked

11 about on your direct testimony.

12   One of the things you said, was that, "on average,

13 claimants who filed with the trust before resolving their

14 Garlock claims, settled with Garlock for just over half the

15 amount that Garlock paid claimants who resolved their Garlock

16 claims before their trust funds."

17   I'm reading a quote from your rebuttal report paragraph

18 148 at 85; is that correct? Did I read it correctly?

19 A.   Yes, within the context of the claims that were both

20 filed and resolved subsequent to the trust paying claims.

21 Q.   I take it that the thrust of this is to suggest that in

22 the future, Garlock's average resolution costs would be lower,

23 because it would have more and better information from

24 claimant's other exposures from trust claims they should get?

25 A.   Yeah, the evidence during that same period is also

1   discussed in my rebuttal report is a greater fraction of the

2   claims -- the claimants were filing their claims prior to

3   resolution with Garlock, and with the availability of that

4   information, Garlock's costs of obtaining that information

5   would go down, and hence you would expect through the model we

6   described that their settlement average with those claims

7   would go down as well.

8   Q.   Let's put up your page 85 in this rebuttal report. It's

9   not an exhibit, maybe it's an exhibit. I don't have the

10   number. But in any event, page 85 of your rebuttal report.

11   There's an Exhibit 35 in the report.

12   And that rebuttal report says:

13   "Trust filing" -- this shows what you just described,

14   that the claim was resolved with Garlock after the trust

15   filings, the settlement average in 2002 dollars -- 2010

16   dollars was $58,000. And if the claim was resolved before the

17   settlement average in 2010 dollars was $108,000. That's what

18   you said.

19   A.   Yes.

20   Q.   We've done a graphic of that, if we could have ACC 783.

21   Now that shows the $58,000 is the red column. And the

22   $108,000 is the blue column.

23   (Mr. Cassada and Mr. Inselbuch conferring.)

24   Q.   This is ACC 783. Please give Mr. Cassada one.

25   Now do you know when you did this averaging out, did you

1   find that the firms that you looked at, filed all their claims

2   before, or all their claims after, or were they spread out

3   over, some before and some after?

4   A.   I didn't do that analysis. I looked at the percentage of

5   claims.

6   Q.   You don't know?

7   A.   I simply partitioned them by the characteristic that I'm

8   describing here.

9   Q.   So you just averaged them all out?

10 A.   The way in which I did it was, I formed a flag about

11 whether or not the claims given the filing information we had

12 from the discovery on the DCPF Trust, and noticed within the

13 data distinctive pattern that for claims filed and settled

14 after 2007 when the trust began paying substantial amounts of

15 money, that this relationship existed.

16 Q.   But I think I just want to show the court what happens

17 when you average things sometimes.

18   Take us to the next page.

19   Here were two law firms in this group that you work with.

20 And each one of these law firms actually settled -- the

21 settlements with Garlock that resulted from before, were

22 higher than the settlements that were after. It came out

23 backwards for these two law firms.

24   Now we blanked out the names of the law firms, but it's

25 from the tables that we have from his materials, and we will

1 give you those names, but we didn't want to put them up on the

2 board and have to clear the courthouse.

3   MR. CASSADA: I'm not sure how this witness can

4 answer questions --

5   THE COURT: Let's see if he can answer. If he

6 can --

7 BY MR. INSELBUCH:

8 Q. I'm representing to you that two of the firms in your

9 dataset look like this.

10 A. Okay.

11 Q. And if you -- what this shows is, in fact, it's the

12 backwards of the first exhibit. The red column is actually

13 taller in each case than the blue column.

14 A. I would take these two given the variations in the

15 settlements about them being the same. I wouldn't call it

16 backwards. But it certainly is different from the overall

17 pattern of the slide before.

18 Q. Right.

19 A. So --

20 Q. But if you average them, look what happens.

21 A. Sure. I get it.

22 Q. You get it. I'm sure the court does too.

23   Averaging can have an interesting effect, because this

24 result now looks like the one on the right when you average

25 them, looks a lot like the first chart that you produced. But

1   if you split them out, they're not necessarily that way.

2   And isn't it fair to say that if this matters, you would

3   have to look at it law firm by law firm. Because you're

4   trying to evaluate their motivation and their settlement

5   practice, don't you?

6   A.   Yeah. I mean, I agree that that's something that could

7   be of interest here. And that essentially there must be

8   something going on, as well, with the selection of the cases

9   more broadly, and particularly could be the selection of the

10 cases more broadly by the law firm at an earlier stage in the

11 selection that causes this pattern to exist. So -- so it's

12 not, you know, this does not surprise me that you found this.

13 Q.   Nothing surprises me. I've been in court too long.

14   But we will, if necessary, we will show each one of these

15 firms to you when we put on our expert case.

16   MR. CASSADA: Mr. Inselbuch, is ACC 783 a

17 three-page --

18   MR. INSELBUCH: Yes. You have it all?

19   MR. CASSADA: Yes, I do.

20 BY MR. INSELBUCH:

21 Q.   You've been in court throughout this entire hearing, have

22 you not?

23 A.   Yes, I have.

24 Q.   You've heard a bit talking up and back about trust site

25 lists?

1   A.   Yes, I understand what you mean by that.

2   Q.   There was some reference in the testimony, I think even

3   you talked about this briefly in your direct, that one of your

4   colleagues has a business of advising clients based upon work

5   histories that can be obtained and are obtained in the

6   litigation for each claimant, which trusts they would be able

7   to file claims against based on the site lists?

8   A.   Yes, for those trusts that have the publicly available

9   site list, yes.

10   Q.   That's a lot of them, isn't it?

11   A.   Probably -- maybe two-thirds of them have site lists,

12   maybe a little bit more than that. Something in that

13   neighborhood.

14   Q.   So anyone -- Garlock, for example, could have come --

15   it's Mr. Scarcella, is it not, in your firm?

16   A.   Correct. Mark Scarcella, yeah.

17   Q.   Garlock or someone like Garlock could come to

18   Mr. Scarcella and say, we have this work history of this

19   plaintiff in the case showing all the places he worked and

20   what he did in those places, and Mr. Scarcella would be able

21   to plug into his computer and say, based on this, this person

22   will be able to file claims based on site lists at two-thirds

23   of the trusts, right?

24   A.   Yeah. There's substantially more work than that, Mr.

25   Inselbuch, because of the way in which the data comes. But

1 starting in -- just prior to the time period when Garlock

2 filed for Chapter 11 filing is when we started doing that

3 business. But yeah, so that -- that's a business that's

4 available.

5 Q.   Did you actually do this, or is this just theoretical?

6 A.   I'm sorry?

7 Q.   Does Mr. Scarcella actually do this or is it in some way

8 theoretical?

9 A.   No, he does this and has done it any number of times,

10 yes.

11 Q.   And does he charge hundreds of thousands of dollars to do

12 it?

13 A.   No, it's not measured in terms of hundreds of thousands

14 of dollars.

15 Q.   Is it in the tens of thousands of dollars?

16 A.   It's generally in the range of $10,000, approximately.

17 Q.   So this information about where these claimants could

18 claim against trusts, I could get that from Mr. Scarcella for

19 $10,000?

20 A.   I would be happy -- or we would be happy to do that, yes.

21 Q.   And just so we're clear, we sat here for eight days and

22 listened to science testimony, Garlock's science testimony,

23 committee's science testimony. Does anything in your estimate

24 depend upon the science testimony?

25 A.   Well, certainly my understanding of the litigation

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1   environment and the way in which the litigation plays out is

2   somewhat dependent upon the way the science case goes.

3   My understanding of why the liability likelihoods are

4   what they are -- this gave me insight into that. I was using

5   that as a way of testing, essentially, the assumptions I had

6   made in coming up with the estimate here, against my

7   understanding of those facts.

8   Q.   You done?

9   A.   Yes, sir.

10 Q.   I'm sorry.

11   But I take it, for the purposes of your report and

12 opinion, you do not rely at all on any of the science experts

13 that Garlock has proffered for the proposition that Garlock's

14 gaskets do not emit sufficient fibers to make anybody sick.

15 I'm reading from your deposition at page 185, line 5, and your

16 answer was, "that's correct".

17 A.   Yeah. I do not use the science evidence of Garlock to

18 reach the conclusion that there is no liability. Rather, I

19 adopt the plaintiff's expert's case -- position, that the --

20 essentially that the exposure relationship between exposure to

21 gaskets or low dose -- particularly low-dose chrysotile

22 products moves in the same way that the regulatory model does,

23 which is a linear model from zero exposure up in the form --

24 in a way that the EPA 1986 model did, as described and done by

25 Dr. Nicholson in his work with them.

1 Q.   So --

2 A.   Essentially adopting Dr. Welch --

3 Q.   I'm not sure I understood what you said.

4   But are you telling us that you're assuming the

5 plaintiff's side of the science case?

6 A.   I'm assuming that in a world in which the plaintiff wins

7 the case, it's because the jury has essentially adopted the

8 plaintiff's side of the case.

9   Given the exposure estimates as I understand them, and

10 the relative exposures of gasket asbestos exposure and fiber

11 release relative to the other products, that in a world in

12 which -- in a situation in which the plaintiff wins, the jury

13 has adopted that position.

14 Q.   And in fact, you testified in your deposition, "so

15 Garlock in proceeding to trial has its scientific case,

16 plaintiffs put on its scientific case, and on those cases

17 where the plaintiff wins, the jury has bought its theory of

18 liability and is essentially bought into that view of the

19 science?"

20 A.   That would be my understanding, yes.

21 Q.   That's at page 190 of your deposition.

22   In your direct testimony you also took the view that

23 whatever Garlock was paying to resolve claims, it did it only

24 to avoid costs. Is that broadly what you were saying?

25 A.   No, I said for, you know, approximately 95 percent of the

1 claims, the analysis revealed that for those claims, Garlock

2 did it solely to avoid costs. Or as I actually described

3 that -- it's not that it was impossible that there were any

4 cases with liability in there, but they were -- had a

5 negligible effect on the result. That's why in my table I put

6 up, I put the words nil instead of zero on category of cases

7 which is 95 percent of the cases.

8 Q.   In your original report at paragraph 8, page 8 -- I don't

9 need that. I think Dr. Bates will agree with me.

10   You said that for settlements below $250,000 there was no

11 factor in that settlement to reflect chances of loss. That

12 was all settlement. That was all avoiding costs below

13 $250,000?

14 A.   I think my analysis in the original report was, I had

15 essentially three categories; zero to 50,000; 50 to 250; and

16 over 250,000. Where in the top cases the issues of liability

17 were the principal concern. There were some cases in the

18 middle one where liability concerns were present. I think we

19 did the analysis there for individuals who were alive at the

20 time of a trial, potential trial in California, and New York,

21 and we did uncover there about 4 percent, I believe, liability

22 likelihood.

23   Subsequent analysis showed that that was primarily --

24 that was driven by the cases between 200,000 and 250,000. So

25 at the time period of the rebuttal report, we had done the

1   additional analysis and lowered that threshold to bring into

2   those cases, because the statistical analysis revealed a more

3   definitive cut, as well as the other tests we did having to do

4   with the potential where the threshold could be, based on the

5   economics of trying cases and so on as described in my

6   rebuttal report.

7   Q.   Indeed, in your rebuttal report you lowered the threshold

8   to $200,000?

9   A.   Right. The additional analysis showed that there were

10 within that range, the additional cases which showed

11 indication of liability concerns, which is why I lowered that

12 threshold. They were there in the prior period, but it was

13 included in a broader range, and we were able to discriminate

14 between them better in the subsequent analysis.

15 Q.   Now based on all of that analysis, you take the view that

16 the threshold is 200,000, and any cases settled below the

17 200,000 were settled just to avoid costs?

18 A.   Well, that, again, you're saying it in an absolute way

19 which is not the way I said it there. I said it, it's the

20 issues there which is the number of cases for which, and the

21 size of the liability concerns of that are negligible,

22 relative to cost avoidance issues. Whereas the liability

23 issues become material in the cases above that level.

24   And again, as I described there, it's not a knife edge.

25 It's a range which is expected to occur.

 1   MR. INSELBUCH: Your Honor, may I use the easel?

 2   THE COURT: Sure.

 3   BY MR. INSELBUCH:

 4   Q.   When we talk about these thresholds, we have an axis

 5   here. And we're saying this is all the cases above 300,000.

 6   And the way that you were -- I'm sorry. Above $200,000.

 7   And the way you tested this, I think you told us is, you

 8   had the dollar amount of the settlements, and down here the

 9   age of the claimant. And if there was some relationship

10   between the liability and the settlement, you would expect to

11   see some relationship that looked somewhat -- this slope

12   should go down some, to reflect the fact that the older the

13   claimant, the lower the settlement amount?

14   A.   Yes, that's the analysis.

15   Q.   And now I'm going to try to superimpose it on here to

16   make it simpler. If it's under -- let's do a different color.

17   Let's do this color.

18   If it's under $200,000 to test your theory -- though I

19   agree with you it's not a knife edge -- the curve will be kind

20   of flat, wouldn't it?

21   A.   That's the analysis.

22   Q.   Right. Now, would you be surprised to find that if you

23   ran the same test, and you ran it for above a number as low as

24    $10,000, there would still be slope to it?

25   A.   Well, if you mix in the amounts above $200,000 into lower

1 amounts, it will always have some slope in it, because you're

2 mixing the ones with slope with the ones that don't.

3 Q.   But if you took the amounts in between, they wouldn't be

4 flat, they would all have slope in it. We could work our way

5 all the way down and we would still have slope in it?

6 A.   Certainly. You're mixing in the ones for which there are

7 liability concerns, absolutely.

8 Q.   How do we know where this flat line begins?

9 A.   Well, there's several different ways in which we did that

10 test, as I described in the report. One of them is the

11 economic test which we described in the rebuttal report which

12 considers the costs that it takes cases to go to trial. And

13 to the extent that we expect to see cases for when the

14 liability estimates -- excuse me -- the extent to which the

15 costs of the trial are there, you can expect to see certain

16 outcomes -- are the outcomes that you see for the settlements

17 rational, economically rational, relative to the costs of the

18 trial. That's one way to do it. That gives you essentially a

19 place where you can test. So you test the threshold of the

20 difference between above and below the particular threshold

21 that the economic test gives. It's a statistical test. What

22 you find below that amount, that there is no threshold --

23 excuse me, there is no slope, and above that there is.

24   There's a more sophisticated statistical test which

25 essentially would allow for the testing of a breakpoint as

1   it's called, a more sophisticated econometric test that you

2   can do here, which I've looked at as well, but it simply

3   confirms what I had already concluded. No need to add that in

4   addition.

5   But it's essentially a more sophisticated discrimination

6   test done econometrically on this. But it simply confirms the

7   exact same analysis that I have here, which is that the

8   threshold, the economic test posits a particular threshold

9   where it makes sense -- economically rational sense that it

10   would be the effect of liability likelihood, that is if you're

11   going to have a trial likelihood of success for the trial, you

12   would expect that you can extract a substantial amount of the

13   expected trial costs.

14   If you do not have liability likelihood, or if it's nil,

15   you don't have a credible threat of taking cases to trial, and

16   there's much lower costs that can be avoided. So it comes at

17   it from several different ways.

18   Q.   But you agree with me that we could put this curve for

19   all the cases above 200,000 -- above 200,000, above 150,000,

20   170,000, all the way down to $10,000, it will still be slope?

21   A.   Sure. The more you mix them -- but what you see is --

22   rather than you have one misperception in the way you've drawn

23   the picture there. Because as you take that threshold down,

24   that line is going to get flatter and flatter and flatter.

25   Because you're mixing a combination of things which have a

1 | flat line, and those which have a line that's a slope at which

2 | we found it, was about .4 -- excuse me, about .7 percent per

3 | year decline. As you mix those two things together in

4 | ever-increasing proportions of the lower one, the line will

5 | get flatter and flatter and flatter. You can take it all the

6 | way down to zero.

7 | The point is, that test -- the other test we did, that

8 | test is very powerful for finding the ability of liability

9 | likelihood in it.

10 | As described in one footnote in my report, you can add as

11 | little as a .035 percent. That's 35 one-thousandths of a

12 | percent of liability likelihood. And given the thousands of

13 | observations we have here, you can detect that within the

14 | data.

15 | So the fact that below the 200,000 range you find no

16 | liability likelihood from a statistical test, is strong

17 | evidence that the liability concerns are nil relative to the

18 | cost concerns.

19 | Q.   Well, we'll leave it for Dr. Peterson to comment on this,

20 | because this is beyond my economic -- econometric skills.

21 | Let's turn to the meat of your report, what you actually

22 | did here.

23 | This new method posits, does it not, that all present and

24 | all future claims against Garlock will go to a trial. And at

25 | that trial, everybody that may have responsibility to Garlock

1 that's still not in Chapter -- hasn't gone to Chapter 11 will

2 be a defendant. And the evidence that reflects exposure to

3 materials for -- that are now the responsibility of trusts,

4 will be available to everybody. And everybody will have

5 perfect information, plaintiffs and defendants, about what's

6 going on. And the cases will go to a jury, and the jury will

7 decide them and we'll get a result; is that fair?

8 A.   No --

9   MR. CASSADA: Your Honor, I object to the compound

10 question. Ask him to break it up.

11   THE COURT: Go ahead and answer it if you can.

12   THE WITNESS: I can. But first let me clarify a

13 couple points with regard to that. I never assume perfect

14 information. We explicitly do not assume perfect information.

15 As I described in my direct report, if you had perfect

16 information, you would, in fact, know exposure in fact to the

17 individuals and likely have hundreds of potential parties

18 sharing in liability based on what we know about the history

19 of the products used with asbestos in them.

20   The other thing I think which is more important in

21 this construction is, we're not positing essentially an

22 analytical construct here to figure out and parse the

23 liability likelihood -- excuse me, the liability concerns

24 versus the cost-avoidance concerns.

25   In a practical sense, obviously if you were to try

1   and run trials, transaction cost is the case as we see in the

2   real world dominate that and become the overriding concern

3   when the liability likelihoods are low.

4   The analytical construct is something that is a

5   standard methodology within econometrics. It allows us to

6   parse between these two factors which are not directly

7   observable.

8   So it gives us a basis for estimating the degree to

9   which the parties, when considering whether or not to take the

10 case to trial, take into account what they expect would be the

11 potential outcome from taking those cases to trial versus not.

12   And then we are positing within that construct, fair

13 trials, where the information which is known by both parties

14 is made available to the decision makers, the triers of those

15 outcomes.

16   So whereas we know from, say, discussion with

17 Mr. Hanly and his report, about the role in which the actual

18 trials can have some distortionary impact of who is basically

19 present in the courtroom versus who isn't. In that context

20 you're then talking about how the outcome of the trials can

21 vary from case to case, depending on how the plaintiff

22 presents the case. Then you have to consider that, well,

23 symmetrically with regard to the other potential defendants in

24 the cases as well.

25   So to the extent if you focused your case -- the

1   plaintiff focused the case on any one of the select subsets of

2   the potential liable parties, his positing a situation that

3   it's more likely that a bigger share would be assigned to the

4   ones happen to be in the courtroom than who don't. But on the

5   other hand, they shift from case to case who that target

6   defendant actually is.

7   So whether we consider it as being all of them are

8   together in the same courtroom in an analytic construct way,

9   versus occurs at random which one they target, the essential

10 outcome is the same, that so long as the trials are

11 essentially fair, or they get targeted at random, you get

12 approximately the same outcome, which is the aggregate

13 liability gets divided up in the manner in which I described

14 within my report, which is going to be divided up amongst the

15 parties for which the plaintiff knows or can reasonably know

16 where his exposures come from.

17 BY MR. INSELBUCH:

18 Q.   But just so we're clear, if there are 4,000 claimants

19 that tried their cases, it would take about two weeks -- we

20 saw the science case takes eight days. So that would take

21 8,000 weeks to try just the presence. That would take 80

22 years of jury trials. And it would cost $1,600,000,000 just

23 for the defense cost at $400,000 a case. So we're doing an

24 analytical construct because this couldn't happen, correct?

25 A.   In that consideration, the -- essentially the transaction

 1 | cost -- the liability cost estimates would dominate the

 2 | process.

 3 | In point of fact, if you were to in fact try to defend

 4 | every one of the cases, then by and far -- far and away the

 5 | vast majority of cases -- the plaintiffs would never take them

 6 | to trial at all. That's what the analysis shows. That's what

 7 | the experience of other defendants shows.

 8 | Q.   In fact, as a student of this process, you understand

 9 | that cases settle when the plaintiff's perception of what the

10 | settlement amount should be, and the defendant's perception of

11 | what the settlement amount should be overlap a little bit,

12 | correct?

13 | A.   Well, whether it's a little bit or a lot, as we showed in

14 | the examples that we gave, that it can be a fairly substantial

15 | range.

16 | In the case that I describe there, where we had the

17 | example from the one case, we had a range of potential

18 | settlements, which is nearly $600,000 that could be divided up

19 | between the plaintiff and the defendant, rather than taking

20 | the case to trial. So that's a rather substantial overlap.

21 | Q.   But am I not right, that in order for there to be a

22 | settlement, the plaintiff's view of what the settlement should

23 | be and what the defendant's view of what the settlement should

24 | be, each of them having a range, have to intersect somewhere?

25 | A.   Yes, I think that's the fundamental point here.

1 Q.   Right.

2 A.   Which is, there has to be consistency between the

3 parties' evaluation of the relative likelihood of the outcomes

4 and the potential for what they would get if the case was

5 taken to trial, in order for there to be a settlement. That

6 there has to be substantial disagreement on those for which

7 there would be no settlement for which the case would go to

8 trial.

9 Q.   And if those two don't overlap, those are the ones that

10 go to trial?

11 A.   That's basically the economic analysis of it, yes.

12 Q.   And basically, what the jury decides is, whose perception

13 was more accurate?

14 A.   Well, yes. The jury makes a decision about what it sees,

15 based on the cases -- how they're presented, yes.

16 Q.   Now, are you telling us that this whole construct is to

17 try and predict how the cases would ultimately settle out?

18 A.   No, this a construct that basically allows us to

19 analytically parse between those elements and how much of the

20 amounts that could be spent are actually represented by

21 Garlock's asbestos liability.

22 Q.   But you're not suggesting that these trials would

23 actually take place. What you're suggesting is, through this

24 analysis, if people had in their heads what would happen at

25 these trials, this is how it would resolve itself?

1   A.   Well, I think as I've shown both in my direct and as

2   we've talked about here, the outcome of the settlements is

3   from a standpoint of considering both the liability concerns

4   and the cost avoidance concerns, you know, depends on the

5   information regime about the cost to the defendant of

6   obtaining the exposure information.

7   That's why we laid out the alternative estimates that we

8   did, and why we did the financial reporting forecast the way

9   we did.

10   And what we've done through the analysis here is, be able

11   to parse out of that, how much of that is due to the liability

12   concerns, and how much of that is due to the cost avoidance.

13   Q.   And we do that looking at verdict results. We do that

14   looking at the verdict results, not at the settlement history

15   of Garlock, correct?

16   A.   Well, as I describe, we use the verdict analysis to

17   determine, based on the verdict history, how much of the --

18   what the liability likelihoods and potential outcomes of the

19   cases could be. That's the history that all the parties have

20   for potentially analyzing and handicapping the outcomes of the

21   cases.

22   In addition to that, we know what the claimant's

23   characteristics are. We have a good idea, hence, what the

24   potential economic damages are. And hence, understanding the

25   litigation environments in the states, what the relative

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1   noneconomic damages components are.

2   So, we essentially there mimicked what it is essentially

3   an economic analysis that the parties would do in handicapping

4   the case, which lead then in combination of what the costs of

5   the cases are to settle, the negotiation, if you will, between

6   the two parties that comes to a settlement amount which takes

7   account of both elements in the settlement amount.

8   And the analytical exercise here is to understand within

9   that, how much of that -- that is from the liability concerns,

10   versus how much is the cost concerns.

11   And that of course is a function of the information

12   regime for which we work. How costly is it for us to get the

13   exposure information that is vital to Garlock's defense.

14   And that is -- so what we know is that the amount that

15   you get in settlements, is going to be determined by

16   alternative, defense posture of the company, the availability

17   and cost of getting the relevant information.

18   Whereas the liability is essentially invariant to that.

19   It's essentially driven by what the liability likelihoods

20   would be, given the information is presented and done, as we

21   posit here, in fair trials.

22   Q.   Fundamentally, you're saying what we're trying to predict

23   here is, how all these cases in the future would settle if

24   Garlock had information it claims it was deprived of?

25   A.   Well, we've done two things. We've estimated what the

1 liability concern portion of that is. What Garlock's asbestos

2 liabilities would be. And then I provided several alternative

3 estimates about what the expenditure -- what the settlement

4 amounts could be, based on the amount of available information

5 and the cost of obtaining that information to Garlock in its

6 defense.

7 Q.   Now, to do this analysis, we rely on tort system

8 verdicts, do we not --

9 A.   I use that --

10 Q.   -- rely all on the settlement history, correct?

11 A.   I'm sorry. I was answering and then you talked some

12 more. So go ahead.

13 Q.   I beg your pardon?

14 A.   Please repeat the question.

15 Q.   In doing this analysis we rely on tort system verdicts,

16 we don't look at the settlement history itself, correct?

17 A.   Well, I think what I described was, in doing the

18 calculations of the liability likelihood in the affirmative

19 case, I used the verdict history as the basis for the

20 calculations. And then used the settlement data, and my

21 analysis of the settlement data to test the veracity of that.

22 Q.   Now, historically, what percentage of Garlock's claims

23 were resolved by trial verdicts?

24 A.   Well, they had essentially 83 cases were tried by

25 verdict. We had a settlement history of approximately 22,600

1 and change, of cases. So that's a miniscule fraction. I
2 could pull out a calculator and do it, but --
3 Q.   Less than 1 percent?
4 A.   Yes, considerably.
5 Q.   Okay. And is Garlock's history in this regard different
6 from other defendants?
7 A.   Yes.
8 Q.   Some tried more cases at different times in their
9 history, some didn't?
10 A.   Yes, they've done different alternatives.
11 Q.   But Garlock's history was, for the most part, group
12 settlements, was it not?
13 A.   Much of Garlock's history involved group settlements, but
14 also individual settlements which -- as well.
15 Q.   Now, so -- but you didn't rely on -- this much of its
16 history in these group settlements in doing any of this
17 analysis, did you?
18 A.   Well, I certainly considered the role the group
19 settlements played a lot, because that's a substantial portion
20 of what Garlock did. And in particular, when I'm doing my
21 analysis of the relationship between costs and defense costs
22 versus liability analysis, it was very much in my mind about
23 the effect the group settlements would have on that.
24 Q.   We're going to look at what you actually did in a few
25 minutes.

1   But were you here in court when Mr. Turlick testified?

2   A.   Yes.

3   Q.   He said, according to my notes "verdicts are always

4   uncertain and unpredictable". Did you hear him say that?

5   A.   I believe that I think we've shown the picture of the

6   potential amounts that we've showed, and there's quite a wide

7   range in potential outcomes.

8   Q.   And you've testified, have you not, that almost by

9   definition they are not representative of the cases in

10   general, the ones that go to verdict?

11   A.   The average that you get out of cases that go to trial,

12   it's not representative of the average of the cases more

13   broadly. There tend to be more -- they tend to be more highly

14   selected, as we showed, toward cases which would be higher --

15   higher potential outcomes, more likely to be alive, more

16   likely to be in jurisdictions that have higher value.

17   Q.   You told us about reading articles by Professor Priest of

18   the Yale law school?

19   A.   Yes.

20   Q.   Am I not correct that Professor Priest takes the view

21   that trial verdicts are neither random or representative?

22   A.   I agree with that. Hence, part of my analysis of how you

23   use the trial verdicts, and how you have to test the trial

24   verdicts to apply it to the cases more broadly.

25   It's not that they're devoid of information, they just

1 simply are not representative. You can't take the average

2 outcome of them and just blindly apply it to the totals.

3 Q.   All right. Now let's go back now to your actual report

4 and opinion.

5   I'm going to focus first on your estimate of

6 responsibility for the present claimants. And the number

7 that's in your report is that -- when all is said and done and

8 you do all the things in 160 pages you talk about, that

9 estimate will be something less than $25 million. That's what

10 you say in the report?

11 A.   For the liability of Garlock -- asbestos liability.

12 Q.   For the presents.

13 A.   Yeah.

14 Q.   Right. You don't provide any more precise number in your

15 report, do you?

16 A.   No, the number, as I indicated there, the actual amount

17 is, I think as I said, is less than, and most likely

18 substantially less than that number. But I don't try and

19 quantify it below that number.

20 Q.   And if we read your report from beginning to end, can we

21 find out how you calculated that number? Do you show any

22 other numbers along the way that gets you to that material?

23 To get that number less than $25 million?

24 A.   I think I showed lots of calculations of that. We

25 discussed that in some detail in my deposition. We could have

1 spent more time on it in my deposition.

2 Q.   Well, I'm asking you in the report -- where in the report

3 do you show the arithmetic that gets to a number somewhere

4 under $25 million?

5 A.   There's lots of that in my backup material.

6 Q.   In your backup.

7 A.   The description of it is given in my report. The factors

8 that play into it are described in my report. And then the

9 computer programs, which when you do the calculations are

10 provided in my backup material, as is common.

11 Q.   Right. Now Dr. Gallardo-Garcia gave us this robust

12 Garlock database yesterday -- Friday, offered in evidence.

13 The material, the calculations are not in here, are they?

14 A.   Not -- that's not what that -- my understanding is that

15 that is a copy of the data that's used for the evidentiary

16 purposes.

17 Q.   Right. I'm sorry.

18 A.   I wasn't finished with my answer.

19 Q.   If I beg your pardon.

20 A.   Your description was, that disk is not -- there's other

21 information that was provided to you as the backup material

22 for the report at the time it was submitted. And then there

23 was a day-long deposition where I was available to answer any

24 questions regarding that calculation and none were forthcoming

25 at that time.

1   Q.   Right. But if the court wanted to figure out how you got

2   to the number less than $25 million, he couldn't tell from

3   reading your report, could he?

4   A.   I don't think that's right. I give a description of the

5   number and all of the steps that I went through to get it.

6   So -- and the parameters which lead into that model. So it's

7   fairly straightforward.

8   Q.   Yeah. But every step you report, there's no

9   quantification. It's trust me, whatever these numbers are, at

10   the end of the day it's going to be less than $25 million?

11   A.   I don't think that's right. But the report is --

12   describes the steps and how we went about doing it. And the

13   model, which actually is used, the calculations are done, was

14   provided.

15   Q.   Indeed. And indeed sometime in the winter we got another

16   one of these (indicating) did we not, from you, another batch

17   of material in computer format that was your backup that

18   explained all the steps you did, correct?

19   A.   Right. A few days after the report was turned in.

20   Q.   Right.

21   A.   Right.

22   Q.   We actually took a look at that. And we wanted to figure

23   out step-by-step what you actually did, to get to the numbers

24   that you got to.

25   Now there were basically four questions that needed to be

1   answered, were there not? How much a successful plaintiff

2   will win at verdict, when they win?

3   A.   The potential compensatory amount, yes.

4   Q.   And then the second question would be, how many of them

5   are there altogether?

6   A.   That's one of them.

7   Q.   And a third question?

8   A.   Sorry.

9   Q.   How many of them will win; correct?

10   A.   Yeah. Those are the elements of it.

11   Q.   And at the end, the fourth question is, of the ones that

12   win, and of the amounts they win, how much of that will

13   Garlock pay?

14   A.   It sounds like you understand it fairly well.

15   Q.   Okay. So those are the four -- I don't want to call them

16   steps, I want to say those are the four factors that go into

17   the analysis, and into the -- push the button finally to get

18   to the number that's less than $25 million?

19   A.   Sure. Those are the basic elements of it.

20   Q.   All right. Now let's start with the first one. How much

21   will they win if they win.

22   Now you went about that by doing something called the

23   regression analysis, did you not?

24   A.   Well, I used regression analysis as part of coming up

25   with that.

1   Q.   Right.   You took a database of several hundred verdicts

2   that you found publicly reported, did you not?

3   A.   Through Mealey's, Westlaw, yes.

4   Q.   Various places.   And these were verdicts that reflected

5   plaintiff's successes in mesothelioma cases?

6   A.   Correct.

7   Q.   All right.   And you looked at that and you've decided

8   that there would be three variables that would be predictive

9   of the results that occur, correct?

10 A.   Well, I think that's -- let me -- I don't think that's

11 quite the accurate description of it.

12   What we know from the analysis of the verdicts is, they

13 tended to come from -- more often come from states which had

14 higher juries -- higher value outcomes than the typical filed

15 claim.   They tended to be younger claimants than comes from

16 the typically filed claim.   And they tended to be more likely

17 to be alive at the time of the trial, than the typically filed

18 claim.

19   And hence, in order to come up with a way -- rather than

20 just calculating an average from that, if we want to apply it

21 to the broader array of claims, we need to have essentially an

22 analytical description which accounts for the relative

23 contribution of each of those factors in the total.   The

24 regression analysis is the factor which gives us that.

25   And the way we specified a well-formulated regression,

1 which would allow us to essentially compute what would be the

2 appropriate average accounting for the jurisdiction, the age,

3 and the life status of the individual claim.

4   So it's a way of correcting for what we call the

5 selection bias of the verdicts that we see, since we know that

6 they're a selected group, relative to the overall average by

7 comparison of the claims that are tried vis-a-vis the claims

8 that are filed.

9 Q.   So you used -- basically you had three factors and you

10 weighted them, based upon the information that you got out of

11 the data, correct?

12 A.   Essentially, we used the regression procedure to find

13 what the relative contribution of each component was to the

14 average.

15 Q.   And the three factors were age, whether the claimant was

16 living or dead at the time of trial and what state grouping

17 the case fell into?

18 A.   Right. That was the selection that was going on amongst

19 the cases, between the filed cases versus the resolved

20 cases -- the tried cases.

21 Q.   And you used that, and you applied that regression using

22 those factors to 3,932 claims, did you not?

23 A.   Yes, all of the claims in the pending -- the open

24 mesothelioma claims.

25 Q.   You were here when Dr. Gallardo-Garcia testified he

1 explained that there was -- first there was what he called a

2 meso questionnaire, and that reduced the population of

3 claimants from 6,000 to about 4,000?

4 A.   Right.

5 Q.   Yeah, and that's the 3,932?

6 A.   That's correct. It's the remaining number of open

7 mesothelioma claims after the process.

8 Q.   And then -- and then what you did is, you then did this

9 regression, and you basically valued using this regression

10 each one of those 3,932 claims?

11 A.   Through the steps that you just described.

12 Q.   And you get a sum for that?

13 A.   Yes.

14 Q.   And then the next step was, you working with the

15 questionnaires, you decided that some of these people, some of

16 the 3,932 claims, would never come to fruition because they

17 could not show sufficient exposure to Garlock products, did

18 you not?

19 A.   Right. Rather than doing as we do -- as is done in the

20 settlement analysis, which is just look at the historical

21 percentage of paid to unpaid claims. Here we went -- which is

22 a proxy for whether or not they have product exposure. I

23 mean, you put up the description of what it took to basically

24 be a paid claim. We went directly to the plaintiff's own

25 assertion about whether or not they had contact, either

1   directly or indirectly with Garlock's product. We assigned a

2   valuation to those cases which had at least sufficient

3   criteria to make it the first step towards getting to a trial.

4   Q. And basically what you did was, you took out from the

5   aggregate that you had obtained by regression for the 3,932,

6   the values that you've had attributed to 1,755 of these

7   claims?

8   A. Right, we assigned a zero value --

9   Q. Right.

10   A. -- for the ones that could not establish contact or did

11   not assert -- not establish, just assert contact with Garlock

12   asbestos-containing products.

13   Q. But you didn't do it by average. You actually took out

14   each one of the 755?

15   A. Well, I'm only taking exception to your word "took out".

16   We assigned them a zero value because they didn't assert

17   contact with Garlock's product. So there's no basis to

18   believe that there would be any liability with those cases,

19   because --

20   Q. Fair enough. I'm just trying to identify what you did.

21   I'm not quarreling with you, yet.

22   So you now wound up in the next level with an aggregate

23   for the remaining 2,177 claims, correct?

24   A. Well, I'm not sure where in the analysis you're

25   describing. We were talking about the plaintiff -- we were

1 talking about the potential compensatory amounts.

2 Q.   Yes.

3 A.   And you have to go through each one of the steps before

4 you add it up to get to the total. So are you going through

5 all of the steps, because we didn't add the verdict amounts

6 together.

7 Q.   I'm saying -- you told me before you used the

8 aggregate -- the regression analysis. You applied it to the

9 3,932 claims. And you got a value for each one of those

10 claims?

11 A.   Correct.

12 Q.   Each one individually from your regression analysis?

13 A.   Right. But then we don't add those numbers up.

14 Q.   But you got a value for each one of those?

15 A.   We got a potential verdict amount for each claim to use

16 in the model that we described.

17 Q.   Right. So one of the factors then, is the potential

18 verdict amount for those 3,932 claims?

19 A.   Right. We now have an estimate for each one of them.

20 Q.   And you took out of that factor the -- because you marked

21 them for zero, the 1,755 claims. So the factor is now reduced

22 to -- the regression analysis for the remaining 2,177 claims?

23 A.   I think there's a little bit of confusion in the way

24 you're describing it here.

25   We have essentially 309 -- 3,900-plus claims. Each one

1 of them has a number on it. And then at this point for the

2 analysis before -- we're not adding up those numbers of

3 potential verdict amounts. We're simply saying at some later

4 stage --

5 Q.   We'll do that --

6 A.   -- we say that the liability likelihood associated with

7 those who don't assert contact is zero, versus those that are.

8 That doesn't come as a percentage against the total.

9 Q.   That's why I call it a factor.

10 A.   Right. But I just wanted to make sure because it sounded

11 to me like you were talking about adding up verdict amounts

12 and that's not what we did.

13 Q.   Well, it doesn't really matter, does it? It's going to

14 be a factor in the process.

15 A.   Sure it matters.

16 Q.   In your analysis, you have values now for 2,177 claims

17 with positive numbers on them?

18 A.   I'm sorry, Mr. Inselbuch. You're mixing two things

19 together. To get clarification here, you're mixing together

20 the liability likelihood which is another factor, with the

21 assignment of the potential verdict amount.

22 Q.   I haven't gotten to the liability factor at all. I'm

23 just talking about what we agreed was step one; if they win,

24 how much do they win?

25 A.   Right. That exists for all 3,900 claims.

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1   Q.   But then you put -- you then, looking at the PIQs, you

2   took out 1,755. You said those people get zero.

3   A.   That's part of the liability likelihood calculation, not

4   part of the first step. It's a different factor.

5   Q.   But in any event that reduces -- it's part of the same

6   calculation, is it not --

7   A.   It's --

8   Q.   -- when we're all done?

9   A.   It's the other step, a different step.

10 Q.   Right. Now, after you did that, there were only two more

11 steps in your analysis, were there, am I right? Only two more

12 factors that got applied here. One was, you multiplied the

13 result by 1/36th. And the other was, you multiplied the

14 remaining result by 3/36th; isn't that what you did?

15 A.   No.

16 Q.   Tell me what you did.

17 A.   All right. That's what I was just trying to describe.

18 You described four pieces of this, four steps to this. You

19 have the initial valuation of what the potential verdict

20 amounts are.

21   We then have the valuation then of what would be the

22 liability -- essentially the liability likelihood within each

23 one of these cases, and that includes essentially the zero for

24 the cases for which there is no asserted contact.

25   And then a potential amount for which would be the

1 liability likelihood for the other, whatever that number was

2 that remained after we removed those cases.

3   And then on that amount we then assigned, based on what

4 would be the potential amount of each of those cases, that

5 we -- would basically be assigned to Garlock, and we did three

6 separate calculations there as I described in detail in my

7 report.

8   One of them is essentially a calculation which assumed

9 that in all jurisdictions, all of the 36 parties could cover

10 their liability share, as I described in my direct.

11   We don't really know from any of the evidence that's been

12 presented here or elsewhere, whether the trusts are actually

13 covering their liability shares or not. The data have never

14 been provided to us that allow us to calculate that. And your

15 side opposed the discovery that would allow us to find that

16 out as they have done here. So I've done it as I described in

17 my deposition three different ways.

18   I first assumed that all of the information was that all

19 of the parties could cover their relative liability shares,

20 which essentially amounts to dividing that by -- into the 36

21 parties that were there.

22   Another calculation that I did was to assume that the

23 trusts were not covering their full liability share and were

24 treated in that way in the calculation, and hence they got a

25 different calculation depending on whether or not they were in

1   a joint and several jurisdiction or a hybrid jurisdiction

2   along the lines of what I described in my direct examination.

3   And then also for the case of just simply understanding

4   the idea of what would it be -- what result would I get if I

5   added every jurisdiction to joint and several. So that no

6   matter whether or not they were in the hybrid or several

7   states, were treated as joint and several, wanting to

8   understand within regard to that, what would have to be the

9   liability likelihood that would be consistent with the first

10 two.

11   So essentially all of those calculations were things that

12 I did. And on the basis of the benchmarks that I created for

13 each one of them, it's obvious, vis-a-vis particularly the

14 liability likelihood test of the settlement data, that a

15 number -- the actual liability likelihood is less than

16 8 percent, and the aggregate total of the pending claims would

17 have to be less than 25 million, and probably considerably

18 less from the standpoint of the liability.

19 Q.   That's all what you said in your report in great detail?

20 A.   Right.

21 Q.   But we went into your code, and we found you really only

22 did four things.

23   Can I have ACC 803? Make that bigger.

24   As I said before, you took 3,932 claims, and you put them

25 through your regression analysis, and you came up with a

1 number to all of these digits -- or you could come up with a

2 number to all of these digits?

3 A.   By the way, this is not my code. Right? This is code --

4 Q.   This is what we did?

5 A.   That's right.

6 Q.   We did your regression --

7 A.   This is Dan Relis' (phonetic) language.

8 Q.   This is our regression of the 3,932 claims. You get you

9 wind up with 16,886,262,696. When you take out the 1,755, you

10 wind up with 2,177. And you get $9,377,759,943. And if you

11 divide that by 36, you get 2,595,000,000 -- I'm sorry --

12 A.   I think you're off.

13 Q.   I got that wrong. Two -- 25,000,965?

14 A.   No $259,659,998 --

15 (Counsel and witness both talking at the same time.)

16 Q.   And when you multiply that by 3 out of 36, which is a

17 decimal or .08333, you get $21,629,678. And that's your under

18 25 million number?

19 A.   That's the pure several calculation, yes.

20 Q.   All right. Now that's indeed --

21 A.   You can do that calculation in that way. The arithmetic

22 is equivalent to that way --

23 Q.   You didn't do it that way, but it came out that way,

24 didn't it?

25 A.   I think if you hadn't talked over me, you would have

1 heard me say, it is mathematically equivalent to this

2 calculation when you do the several calculation.

3 Q.   Can I have ACC 802a. This is actually out of your

4 backup. Right? There's something in there called "Pending

5 Stock Evaluation and Future Claims Valuation". Pending stock

6 valuation, that's the present claims, is it not?

7 A.   Yes. I don't disagree with that.

8 Q.   And the number there is 21,629,678, and that's exactly

9 the number we got?

10 A.   Yes. As I said, that's what mathematical equivalent

11 means.

12 Q.   Eight important digits?

13 A.   Yes.

14 Q.   So you think we got it right?

15 A.   I'm not disagreeing with you.

16 Q.   All right. So then what we're saying here is, we do

17 it -- all of the factors together consist of doing a

18 regression analysis to put value on the claims that we

19 think -- we say actually may have proof of exposure, the 2,177

20 claims. The regression analysis values that. Divide it by

21 36. Multiply it .08333, and that's where we get our answer

22 here, bingo.

23 A.   Right. In pure several calculation it is straightforward

24 and simple like that. Yes, I agree.

25 Q.   If you did -- now, we didn't find anywhere in your code a

1 calculation other than the pure several calculation. We did

2 find that you created code in an attempt maybe to do it, but

3 we couldn't find that you ever ran it?

4 A.   No, we provided you the code, and the description of it

5 is in my report.

6 Q.   But you didn't do it?

7 A.   I did it. You simply didn't produce every potential

8 outcome from that code, but you have the code.

9 Q.   Would it have been bigger or smaller?

10 A.   Well, it depends on which number you use. If you use 8

11 -- .833 (sic), it's a bigger number than either of the other

12 two benchmarks. But the liability -- the settlement test

13 indicates that the actual liability likelihood is considerably

14 less, as I discussed in --

15 Q.   (Indiscernible.)

16 A.   I'm not hiding anything here, Mr. Inselbuch. It's

17 exactly what I described in my deposition --

18 Q.   You really can't either. I wasn't talking about the 8.33

19 (sic), I was talking about the 1/36. The 1/36 -- you decided

20 that on average somehow, there would be 36 parties paying the

21 claimant in every case -- 35, in addition to Garlock, did you

22 not?

23 A.   Yes, typically we have come to that as an estimate which

24 we consider to be a very conservative estimate, relative to

25 the actual exposures that an individual would have --

1 Q.   And --

2 A.   -- and can identify.

3 Q.   This -- but you put up -- yet on Friday you put up a

4 graph that said, well there are some states with joint and

5 several, and some states were several, and some states were

6 hybrid. You didn't do any calculation with that, did you?

7 A.   That's not true.

8 Q.   Well --

9 A.   I provided you the model.

10 Q.   We couldn't find it in your code. So maybe on redirect

11 you could have Mr. Cassada show you where it was done.

12   But in any event, you didn't use it --

13 A.   I think I was clear on that, so...

14 Q.   You didn't use it here, this is what you did. Get us a

15 value for the 2,177 claims, divide it by 36, multiply it

16 by .08333 and that's the estimation.

17   Now, let's talk about those.

18 A.   Is that a question, I'm sorry?

19 Q.   Let's talk about first how you got rid of the 1,755 to

20 get down to 2,177. You start with the 39 -- you can take that

21 off. And you can put up ACC 804.

22   You ground -- you reviewed the PIQs that came in response

23 to the survey and you put them into categories. And the ones

24 in the categories listed here were part of the 1,755 that you

25 took out. Now, there were 402 of the 1,755 there was just no

1 answer, correct?

2 A.   These are -- these are from Dr. Peterson's report. They

3 look about right. I'll accept them.

4 Q.   You don't dispute this table, do you?

5 A.   I have no reason to.

6 Q.   Okay. So 402 of the claims that you took out which was

7 almost 25 percent of the claims just people didn't answer?

8 A.   Yeah. There were a fraction of people didn't answer.

9 Q.   Didn't answer. And you took out some who for some reason

10 or other you said they had a new lawyer. So presumably what

11 that meant, they said they had a new lawyer, the case hadn't

12 been prepared yet. Is that what that meant?

13 A.   "New lawyer", 181.

14 Q.   And --

15 A.   I have to go back.

16 Q.   You have to go back to see. All right. Discovery is

17 ongoing --

18   MR. CASSADA: Does this language "new lawyer" --

19   THE WITNESS: That doesn't look like our language.

20   MR. INSELBUCH: This evolved from his material.

21   MR. CASSADA: Was that language, "new lawyer" --

22   MR. INSELBUCH: You can ask him about it.

23   THE COURT: This is Dr. Peterson's chart.

24   MR. INSELBUCH: This is Dr. Peterson's analysis of

25 what he did.

 1 | MR. CASSADA: Okay. So that's not --

 2 | MR. INSELBUCH: Let's forget about the "new lawyer".

 3 | Q.   "No response". We know what that meant. You took out

 4 | the ones with "no response". You took out 113.

 5 | A.   We assigned the ones as "no responses" as being zero,

 6 | yes.

 7 | Q.   Took out 113 -- oh, I'm told, by the way, by my

 8 | colleague, that indeed this language comes from his database.

 9 | I didn't know that. But that's why this was prepared this

10 | way. We can pull that out for you --

11 | A.   Sure.

12 | Q.   -- or you can pull it out if it's wrong.

13 | "Discovery ongoing". That means in response to the

14 | inquiry of where we -- how were you exposed to Garlock

15 | product? The answer was -- don't know yet, discovery's

16 | ongoing.

17 | A.   Yeah, these are -- okay. So let me just clarify. This

18 | has a title which says, "For Inferring No Contact Status".

19 | Within the PIQ there were a series of check boxes which said

20 | to identify what your contact was. And it wasn't this that I

21 | used -- there wasn't any inference. It was simply a matter of

22 | how many of the claimants had submitted a PIQ, which check the

23 | box, which said, I have contact with the Garlock product. And

24 | that's the term that we used. We didn't infer at all. So I

25 | want to make clear, that's not what I did. What I did was, I

1 looked for the number of claimants who checked the box who

2 said, contact with Garlock product; direct; indirect;

3 bystander.

4 Q.   And if they didn't check the box, they were out?

5 A.   That's correct. They were assigned a value of zero for

6 not asserting through the process --

7 Q.   Even though they may have said, we don't know yet because

8 discovery is ongoing, or I have a new lawyer and he hasn't had

9 a chance to work at it yet, or whatever their reasons were?

10 A.   Right. And then on total we looked at the aggregate

11 amount of the zeros within the claim. And it makes sense,

12 vis-a-vis the historical data we've seen about the percentage

13 of claims that could not and did not assert the contact with

14 Garlock product.

15 Q.   Let's just focus on the one that we understand at least,

16 "no response".

17 A.   Right.

18 Q.   Now, this whole exercise assumes a trial where both

19 plaintiffs and defendants will be able to undercover -- or

20 uncover all reasonably available evidence, correct?

21 A.   Right.

22 Q.   And that assumes that the plaintiff will have a full

23 opportunity to do discovery?

24 A.   Correct.

25 Q.   So, but you have assumed for this purpose that these

1   people that didn't even send in an answer to the

2   questionnaire, for whatever reasons they may have done that,

3   they will never be able to find that proof?

4   A.   Well, I think as I described in my deposition, I've

5   treated this in two different ways. I mean, this was a

6   court-ordered questionnaire asking them to submit which -- or

7   requiring them to submit. They didn't do it. I have two

8   alternative ways that I can treat those responses -- those

9   lack of responses.

10   One is, that the reason they didn't submit the

11   information is that they don't have a basis for asserting

12   contact with Garlock product, which is something that they

13   would understand quite early on in their decision to sue

14   Garlock in the first place.

15   Second of all, I could treat them as if they were missing

16   at random. The economics of the situation based on

17   historically looking at cases where I've had nonresponses,

18   essentially, when elements are missing, they tend not to be

19   missing at random, but they tend to be missing in the

20   direction which suggests that there are less than a randomly

21   selected group with regard to that.

22   As I described in my report, I also tested what would

23   happen to my estimates if I treated them as being missing at

24   random, instead of treating them as purely a zero. As I

25   described, it raised the estimate there by five or six percent

1   of the total.

2   And given the overestimate that we have by using the

3   trial basis and the highly selected cases, to come up with the

4   liability likelihood that is not enough of the difference to

5   make me change the overall opinion about what the upper bound

6   of the Garlock asbestos liabilities are. So -- so I

7   understand the issue, and I've looked at it and thought about

8   it, but it doesn't -- it's not material enough to change the

9   conclusions.

10 Q.   But this is what you did. And this is based upon --

11 A.   That's not what I did. What I did was described by the

12 context, but yes.

13 Q.   Well, that may be, but what you did was, you took out

14 1,755, marked them zero, and these were the reasons you gave

15 for marking them zero?

16 A.   The reasons I said -- I think that's the part I took

17 exception to. The reasons they were marked as zero, is

18 because they did not assert contact against a Garlock product,

19 not for these reasons.

20 Q.   Well, these are the reasons in your database?

21 A.   No, that's an explanation having to do with some field

22 about the status of the claim. It's not something that has to

23 do with whether or not they asserted contact or not.

24 Q.   And in fact, the status of this questionnaire was like a

25 snapshot moment in history, was it not?

1 A.   I don't know what you mean by that.

2 Q.   Well, this went out on a particular day when -- which was

3 several years after this case had been filed in Chapter 11,

4 and a stay had come into place stopping all litigation,

5 stopping all discovery in litigation; is that correct?

6 A.   Well, so it didn't stop the plaintiff's case from

7 proceeding --

8 Q.   Well, it stopped --

9 A.   -- against Garlock.

10 Q.   It stopped the ability of the plaintiff, and any interest

11 the plaintiff might have in developing a case against Garlock;

12 is that correct?

13 A.   So, I mean, it's very rare that the plaintiff learns

14 something about their status from Garlock. The primary source

15 and the vast majority of information in cases about who the

16 plaintiff is exposed to comes from the plaintiffs and

17 attorneys, not Garlock.

18 Q.   We didn't hear that from Mr. Turlick. But what we did

19 hear -- what happened here is, we were testing the information

20 that the plaintiffs had as of the date Garlock went into

21 Chapter 11?

22 A.   The plaintiff has that information very early on in the

23 development of their case.

24 Q.   How about the fellow who gets mesothelioma two weeks

25 before Garlock files a Chapter 11, comes to his lawyer one

1 week before Garlock files in Chapter 11. What's his file

2 going to look like then? Is it going to be developed? Is he

3 even going to have a work history? Is he going to have a

4 worksite history?

5 A.   He's going to have developed that in his case, yes.

6 Q.   He would have developed that in one week?

7 A.   Garlock is not the only person he's suing.

8 Q.   At the same time the plaintiff's lawyer has no interest

9 in developing the case again Garlock, because he can't proceed

10 with it?

11 A.   That doesn't mean the plaintiff's lawyer doesn't know it,

12 doesn't have the information.

13 Q.   So you're inferring what the plaintiff's lawyer knows,

14 even though he tells you, I haven't done the discovery yet. I

15 don't know yet. I'm a new lawyer, I haven't looked at the

16 file. You're saying -- and I didn't send them in at all. All

17 those folks, somehow they all know, as of the filing date of

18 this Chapter 11, what their proof is against Garlock. You're

19 assuming that?

20 A.   I think it's more than assumption, Mr. Inselbuch.

21 Q.   Okay.

22 A.   These cases essentially very early on -- and in fact in

23 the initial interviews that are done between the plaintiff and

24 the lawyer who essentially is the one who he retained in the

25 case, takes a work history -- the doctor, after all as

1   described by the medical doctors who did this information is,

2   they take a work history. But the plaintiff's lawyer himself

3   is going to immediately take a work history, and the most

4   comprehensive work history that he can, because this is after

5   all unfortunately a person who is dying.

6   Q.   How do you know? No plaintiff's lawyer talks to you?

7   A.   Well, sometimes they do. But that description of the

8   case, I think, is economically the only rational thing to do.

9   And given what we've seen here as the testimony and some of

10 the evidence that's developed, that's the only thing that

11 makes sense, given these cases.

12 Q.   First --

13 A.   After all, I've worked with many plaintiff's lawyers on.

14 Cases. For you to say, no plaintiff lawyer talks with me -- we

15 have a rather robust practice. And I know that in many cases

16 even before lawsuits are filed, there is an intensive effort to

17 try and understand the case at a detailed level about what the

18 potential value of the case and against which parties.

19   We do that work on behalf of plaintiff lawyers in our

20 recovery practice, not in asbestos liability lawsuits. But no

21 lawyer who is taking a case on in a contingency basis is going

22 to take on a substantial case without having done -- getting

23 some assessment of what the relative value -- what value of

24 the case is and who they can sue. It makes no sense.

25   THE COURT: Let's take a break.

              Laura Andersen, RMR 704-350-7493

 1   MR. INSELBUCH: Yes, Your Honor.

 2   THE COURT: I've got one question for you before we

 3 do break.

 4   The population of these 6,000 or 3,900 or whatever,

 5 these are cases in which complaints have been filed by

 6 Garlock?

 7   MR. INSELBUCH: Yes, sir.

 8   THE COURT: Against Garlock?

 9   MR. INSELBUCH: Yes, sir.

10   THE COURT: Let's come back at 11:30.

11   (A brief recess was taken in the proceedings.)

12 BY MR. INSELBUCH:

13 Q.   Just going back for just a minute to ACC 804. Just so

14 it's clear. All of these folks file lawsuits, do they not?

15 A.   That's my understanding.

16 Q.   And -- but the "no response" is not that they didn't

17 check off a box, they didn't file any questionnaire; is that

18 correct?

19 A.   "No response", yes. We do not -- that's right.

20 Q.   You didn't get a questionnaire back at all?

21 A.   We didn't get a questionnaire.

22 Q.   Let's turn to -- that was on step two. Let's turn to

23 step three, the 1/36 for a minute.

24   And what you did here to find out that it was 36, you

25 looked at different data. You looked at 512 claimants' files

1 where you could identify, and how many defendants they sued in

2 the tort system. And you looked at 265 claimants' files so

3 that you could identify how many trusts they had claims

4 against. And then you found that of those files, you had 210

5 from which you could get both of those bits of data, correct?

6 A.   Well, it's not quite represented correctly. I mean, it

7 didn't have anything to do with the number of parties they

8 sued. It had to do with the number of parties in their

9 interrogatories or depositions. They identified both the fact

10 that they were exposed to a product and whose product it was

11 or the brand of that product.

12 Q.   Agreed. Where you could get the information where at

13 least you could infer that they would be defendants or they

14 would be trust claims?

15 A.   I don't know if that's an inference. The point is, is

16 that's what they said factually within the data that they had.

17 So it wasn't an inference.

18 Q.   Yeah. And put up ACC 805.

19   This is what the distribution actually looked like,

20 didn't it?

21 A.   Well, I haven't constructed this graph, but there is a

22 wide variety of responses, and what I took was a median.

23   Now this is parties per case. Which -- which is the --

24 if you could just explain to me what it is you graph here?

25 Q.   Well, this is how you get the 36. That's a combination

1 of Garlock plus a certain number of tort defendants, plus a

2 certain number of trusts. And for the various number of

3 parties and the people you were dealing with, this was the

4 result you found, and it centered in around somewhere in the

5 30s, didn't it?

6 A.   Well, okay. So let me just clarify. I did it distinctly

7 separate for the way I did the analysis is slightly different

8 than this. I didn't add the two together and then look at a

9 distribution.

10   What I did was, I looked at the number of parties we

11 identified as being tort defendants. Took -- looked at the

12 distribution of those -- essentially of statistical

13 distribution of those, and took the median, both of the -- for

14 the number of tort -- identified tort defendants, as well as

15 identified tort exposures, as well as doing the same analysis

16 for the trust.

17 Q.   And you took --

18 A.   But there's a wide -- I took a median in this particular

19 case. It could be an average, it could be a median. Though

20 the average would overweight the -- skew the numbers towards

21 the highest value ones. So what I use is the median amount

22 which is more a middle amount.

23   In these distributions they occur very close to each

24 other generally. But it's a more robust measure of the

25 central tendency of the average when you have a skewed

1 distribution.

2 Q.   Okay. Now the 1/36th includes 22 trusts, does it not,

3 and 14 tort defendants?

4 A.   Including Garlock.

5 Q.   Including Garlock. Now, this assumes that you're living

6 in a several liability regime. And that each one of these 36

7 parties were responsible for 1/36th of the responsibility?

8 A.   In the -- I'd state it slightly differently. This

9 doesn't assume you're in a several state. This was the number

10 of parties involved. How those 36 parties are treated,

11 depends on whether -- which type of jurisdiction you're in.

12 And in the several jurisdiction, they all have assigned them

13 all a 1/36th share. Assuming they all have a relative -- have

14 a pro rata share of the eventual outcome.

15 Q.   But that's what you did. You just did 1/36th here, in

16 your calculations to get to the less than 25 million, which is

17 actually the number 21,629,678?

18 A.   I understand you keep representing that. But it is, as I

19 described before, I did multiple calculations and provided you

20 a modeling. And the arithmetic that you provided here is for

21 the several share calculation. It's not the only thing I did,

22 and it's not the only thing I described either in my

23 deposition or in my report. But I just want to make it clear

24 that the fact that you continue to say that, does not mean I'm

25 buying into that.

Laura Andersen, RMR 704-350-7493

1   Q.   You can say you did it. We can't find it in your code.

2   We can find code, but no work-product.

3   But in any event, in getting to the number that you

4   estimated here, this is the calculation that was employed.

5   Now, when you did the -- when you came up with the 22

6   trusts, how did you decide which trusts a particular claimant

7   could claim against?

8   A.   Well, we had several pieces of information regarding

9   that. We had the information that came from the PIQs telling

10   us how many trusts they were asserting claims against. And

11   that number came out to be in the neighborhood of about 18

12   trusts.

13   Then we have additional information which comes from

14   ballots and 2019's which gave us on average -- would have been

15   additional four trusts which -- are trusts for which are not

16   set up and operating. And given that we have both the fact

17   that these on the face of the 2019's and ballots say that

18   they've asserted exposure against the company. As well as my

19   understanding of having worked in this litigation for a number

20   of years, that these claimants will assert exposure against

21   those trusts, and would have historically asserted exposure,

22   it's reasonable to assume that these companies will also

23   have -- these individuals will also assert claims against the

24   additional four. So that's how we came up with the number.

25   Is that clear?

1 Q.   So if they filed proof of claim against the trust or

2 voted in a bankruptcy that resulted in a trust, you assumed

3 they were claimed successfully against that trust?

4 A.   Right.   In light of the fact that that's what they said.

5 But also the fact that historically the evidence is that they

6 did.

7 Q.   Well, in fact --

8 A.   Claims like that did.

9 Q.   Have you looked at the data that the trust published

10 annually to determine what percentage of the claims that file

11 actually get paid?

12 A.   You can't tell the answer to this question through that.

13 Those claims -- they do not provide that information on a

14 disease by disease basis.

15 Q.   Well, they provide it overall, do they not?

16 A.   That doesn't tell you anything.   Those numbers are

17 dominated by the nonmalignant claims, which we've heard

18 discussed here a lot of times, are known to be substantially

19 fraudulent claims.   That's not surprising --

20 Q.   You --

21 A.   You cannot draw an inference from that.

22 Q.   You think the claims that are being reported and resolved

23 by the trusts in the years after 2010, for example, are

24 dominated by nonmalignant claims?

25 A.   I would have to look at what figure -- they do not

 1 separate out the diseases.

 2 Q.   But you don't know that --

 3 A.   And depends on --

 4 Q.   -- do you?

 5 A.   I wasn't given the discovery that allowed us. We asked

 6 for it, it wasn't given to us.

 7 Q.   I see. Let's assume that you're right, that there are 22

 8 trusts. And that if we were to take -- put back ACC 803.

 9   And just as an exercise, if we were to divide the 16

10 billion number by the 3,932 claims, and I appreciate that

11 averages don't necessarily mean much, you would get an average

12 there of $4,294,570 per claim, correct?

13 A.   Sounds about right.

14 Q.   And if 22/36th of that -- that's the number that your

15 regression analysis would say the total verdict would center

16 around, correct?

17 A.   That's the average.

18 Q.   Yeah. The average?

19 A.   Literally.

20 Q.   Let's just work with the average for the moment. Now if

21 22/36th of that was represented by trust's responsibility, if

22 we did 22/36th of that, you get a number that is 2,624,459.

23 A.   Okay.

24 Q.   I did it with one of these. You can check me if you

25 want. But I'm going to represent that I tried to do this

 1 correct.

 2   Now --

 3 A.   We can save some time and go ahead with that.

 4 Q.   In fact, will the trust -- those 22 trusts pay 2,000 --

 5 $2,624,459? Let's take a look at exhibit --

 6 A.   You're missing a step there.

 7 Q.   Pardon me?

 8 A.   You're missing a step there.

 9 Q.   Work with me. You can tell me later.

10 A.   Okay.

11 Q.   Let me take a look at Exhibit ACC 782. Here we put on

12 this list a whole bunch of these trusts and you'll see some of

13 the big dusties (phonetic) they've been talking about B&W,

14 Armstrong, Eagle-Picher, Owens Corning, USG. And what we put

15 on this is from public data. The average value paid by the

16 trust and the payment percentage that they actually paid.

17 We've added it all up, we've divided it by the number of

18 trusts on this list, and we get an average per trust of

19 $20,907.

20   Now, if you trust me for my arithmetic, you multiply that

21 by 22, you get $459,960. Now, what we had said the 2,236

22 would come out to, was the 2,624,459. But we're not going to

23 collect from these trusts in a joint and several liability

24 jurisdiction anything more than $20,097. So we have a

25 shortfall here --

CROSS - BATES

1   A.   Well, 406,000, yes.

2   Q.   I'm sorry. We have a shortfall here of $2,164,500. Now

3   who's going to pay that shortfall? I guess that would get

4   spread over the 17 solvent defendants, wouldn't it?

5   A.   Well, 14.

6   Q.   Huh?

7   A.   Fourteen.

8   Q.   Fourteen solvent defendants. I beg your pardon.

9   So if we divide that number by 14, what do we get? We

10   get an additional $273,900. Which if you add it to the

11   original 1/36th share which was $119,293, meaning any one of

12   the solvent defendants would be paying $273,900 which is 2.3

13   times what they were paying to pick up -- in order to pick up

14   the shortfall of the trust; is that correct?

15   A.   Assuming the plaintiff won.

16   Q.   Pardon me?

17   A.   Assuming the plaintiff won.

18   Q.   We're only working in a case where the plaintiff wins?

19   A.   Right. We have to --

20   Q.   We're trying to figure out what the 1/36th reduction

21   means?

22   A.   Right.

23   Q.   The reduction has nothing to do with plaintiff's winning,

24   it's the share value, is it not, that gets allocated when the

25   plaintiff wins?

1   A.   Correct. That would be part of the calculation. The

2   only thing on this I would say is the numbers in terms of the

3   average that we have here and the total estimate of recovery

4   from the trust is slightly less than what we estimate, but --

5   Q.   I'm sorry. I couldn't hear you.

6   A.   I said, the only thing I would say differently is that

7   the number that you have here in terms of the aggregate

8   recovery from the 22 parties that you have here is slightly

9   less, because -- than what we have, because you have not

10 included the values that you get out of the new trusts, which

11 are part of the four -- the total.

12   So you have a number here that's slightly less than what

13 we get as total estimate. It's something more along the lines

14 of $600,000 in total, but I get your point. It's not going to

15 materially change this calculation on the point you're trying

16 to make. Just wanted to make it technically accurate. It's

17 still going to be close to $2 million as you said.

18 Q.   Okay. Let's fix another aspect of the 1/36th share.

19 A.   This, by the way, is in the calculation that we did as I

20 described --

21 Q.   I'm sure it must be in there, but it's not in your report

22 anywhere.

23 A.   The description of it is in my report, the model is in my

24 backup material.

25 Q.   Backup --

1   A.   And my experience in working with the folks at LAS is

2   they are more than competent in figuring out how to do that

3   calculation from the data we provided.

4   Q.   Who is more than competent?

5   A.   Mr. Relles sitting there.

6   Q.   Oh, yes. We did it for you. We're trying to explain to

7   the judge what you did that nobody can read from the report.

8   Now let's look at the 1/36th again --

9   A.   I don't know what to say about that.

10 Q.   Now to get to the 1/36th, what you're doing here is,

11 you're using a combination of the 1/36th share, and then there

12 are three trials won by plaintiffs in the 1990s, correct?

13   That's where the .08333 comes from, right?

14 A.   Correct.

15 Q.   And there were trials also in the 2000 period?

16 A.   Yes, we've heard a lot about those, yes.

17 Q.   And those trials resulted in a much larger percentage of

18 plaintiff's successes?

19 A.   There's a group of them which did, yes.

20 Q.   Yes. But we're focusing on this 1990s, because I take it

21 you take the view that that was in the days when Garlock had

22 access to better proof of the exposure of the big dusties?

23 A.   That's one part of it. The other part is the settlement

24 liability test.

25 Q.   Now -- and you were supplied with all this information

1 about Garlock's trial results from the 1990s and 2000s by

2 Garlock's lawyers, correct?

3 A.   Yes.   They filled in from the parts that were missing

4 from publicly available data on the trial.

5 Q.   Now, it occurred to us that instead of hypothesizing this

6 1/36th share, and the actual -- and this regression analysis

7 exercise to find out what the jury verdicts would be, we might

8 focus just on the results in those three cases that actually

9 went to verdict in the 1990s against Garlock and see what

10 indeed the plaintiffs won, how many shares there were -- in

11 other words, how much Garlock actually paid. Did you ever do

12 that?

13 A.   I've looked at that.

14 Q.   Do you know how that comes out?

15 A.   I don't have a number off the top of my head, no.

16 Q.   Well, if you start with -- put back ACC 802a and "Pending

17 Stock Valuation".

18   The average payment baked into your estimate per claim is

19 $9,936.

20 A.   That's the liability amount, yes.

21 Q.   The liability. Why don't we talk about liability.

22 (Counsel conferring.)

23 Q.   Now, if you actually looked at the 1990s, 807a, please.

24 The three verdicts in those cases. The average total verdict

25 in those three cases was $2,378,856. And of that, Garlock

1   actually paid three point -- as if there were 3.38 shares.

2   Now if we still applied to that your 8.3 percent

3   reduction factor, the value per claim is not $9,936, but

4   $58,648. Now --

5   A.   Demonstrating how unrepresentative they are, yes.

6   Q.   Well, they're representative enough for you to use 3 out

7   of 36 and say I'm going to reduce the whole package by 3 out

8   of 36 because this is the way it came out in the 1990s.

9   So we're just using the same results, the same verdicts,

10 to see if we actually use the verdicts themselves where we

11 would come out?

12 A.   Right. But you also need to test that with the other

13 information that you have and, you know, you could conclude --

14 Q.   You'll get a chance to do that on redirect.

15 A.   Okay. Excuse me.

16 Q.   Just work with me.

17 A.   I'm sorry.

18 Q.   In fact, for the period, 2000-2010 the average total

19 verdicts were $4,280,268. And Garlock paid as if there were

20 only two players. And there the plaintiff's percentage win

21 was not 8.3 percent, but was 36.2 percent, inferring a value

22 per claim of $775,556.

23   And if you add the period together, you get these results

24 which are on the board, the average total 3.9 million, Garlock

25 paid just under half of the liability -- paid just under half

1 the liability. The average percentage, plaintiff of winning,

2 was 24.1 percent, inferring for the whole period, a value per

3 claim of $458,000.

4   Now, if you use these -- please turn to 807b.

5   If you use these numbers and put them through -- you

6 know, Mr. Cassada, you gave us all your stuff at the end of

7 the day or in the mail, and we're trying to help you out, but

8 try not to interfere when I'm asking questions.

9   MR. CASSADA: I need the exhibits. We haven't been

10 holding exhibits.

11   MR. INSELBUCH: These are demonstrative.

12   MR. GUY: We didn't get --

13   MR. INSELBUCH: Let's not argue and waste our time.

14   THE COURT: Go ahead.

15   MR. INSELBUCH: We will try to hand them to you as

16 we get to them.

17 Q.   We said, okay, Mr. Bates said, the value per claim was

18 9,941. The number of claims was 2,177. His liability in

19 millions -- this was just present claims was 21.6.

20   But if you use these other numbers that would actually be

21 derived from the trial results, you get very different

22 numbers, do you not? You get a present liability if you use

23 the 1990 figures, and use the 8.3 percent calculations, you

24 get a number of 127.8 million.

25   And if you use the 2000 period, where you have a

1 little -- you have a larger average total verdict, you have a

2 greater percentage of the verdicts paid by Garlock, and a much

3 larger percentage of plaintiff wins, you wind up with a

4 liability, based on these verdicts alone, in excess of

5 $1.6 billion just for the present claims.

6   And if you average it over the entire period, you would

7 come up with a liability just for the present claims of

8 $1 billion. Do you follow the arithmetic?

9 A.   It's -- so you're basically wanting me to buy into the

10 idea that Garlock is the only one of two parties who is liable

11 for all of the claims that are asserted against it in the

12 pending claim period?

13 Q.   I don't want you to buy into anything. I'm just telling

14 you that if you use this data, that's what actually happened.

15 That's what Garlock actually paid against these claims in

16 1990, in 2000s and on average overall.

17 A.   Right. If you use a few numbers from this data in a very

18 distorted way, which is unrepresentative of what actually

19 occurred, sure you can make these numbers do this. And if you

20 extend these out into the indefinite future, you can make it

21 appear as if Garlock's liability is equal to the national

22 debt. But that doesn't mean it's valid calculations.

23 Q.   Valid enough to use this to get 8.3 percent?

24 A.   Not without testing it. It's very important that you

25 test it against the veracity of the assumption you're making,

1   against the other information that you have. And that's an

2   integral part of this analysis. And as we know from the

3   reference you made, Priest and Klein works from the early '80s

4   and mid-'80s, the trials are not representative.

5   So if you're going to use the trial information, you have

6   to take account of the degree to which it's unrepresentative

7   of the pool you're using, so that you can translate it to

8   something that is representative. And you're not doing that

9   in this context.

10   Q.   Right. And we're not looking at the actual settlement

11   history that tells us what really was going on either.

12   We're looking at these three verdicts to say, what are

13   the chances Garlock will lose. And we're saying, 3 out of 36,

14   that's the chance, because there's what happened in 1990s,

15   right?

16   But we're not going to look at the rest of the data that

17   comes with those same verdicts. We're not going to look at

18   the real data that comes with verdicts in the 2000s, even

19   though they are the most recent data, which is what you would

20   look at as you testified when you're doing financial

21   reporting.

22   A.   We not only have the data, the settlement data, we also

23   have the understanding of the cases. And the difference

24   between the cases that we have seen in the past, vis-a-vis the

25   cases that were tried. And it's very clear without even

1 looking at the settlement data that they're not

2 representative. And there's been nothing done here to account

3 for that. There's only one way to test it.

4 Q.   We don't argue with you that the verdicts are not

5 representative. We agree with that.

6 A.   Okay.

7 Q.   Now let's go back to step one just for a minute, the

8 regression. You fit three variables -- this was age, alive or

9 dead, and what group of states the claimant fell into.

10   And you did that and used that to put values on the

11 claims that were gonna be involved in getting verdicts. Did

12 you ever do anything to validate that regression analysis?

13 A.   Sure, lots of things.

14 Q.   Did you run that regression analysis against what Garlock

15 actually had experienced in the tort system?

16 A.   I looked at that a lot. But what particular thing are

17 you referencing?

18 Q.   Well, I'm saying that you knew about approximately 20

19 verdicts in the tort system that Garlock had taken, had lost,

20 actually.

21   Did you give me that memo, Andrew? The memo giving them

22 the verdicts.

23   MR. SACKETT: Yes.

24   MR. INSELBUCH: Yeah, that's it.

25 Q.   You were given information about all of Garlock's

1 verdicts for the period of 1990 to 2010, were you not?

2 A.   As far as I know, yes.

3 Q.   And when you did the regression, you decided that was not

4 enough information, you would go get more verdicts out of

5 Mealey's and other places?

6 A.   No. I mean, I think that what we're trying to estimate

7 there is the potential compensatory amount across all of

8 the -- for all of the cases. That's not Garlock specific. So

9 we know that there's a fair degree of variation in the --

10 those comparative amounts. So the more data we can have on

11 it, the more reliable estimate we can get of the potential

12 verdict amount.

13 Q.   Just as an experiment, did you test whether or not your

14 regression would predict the 18 actual verdicts that Garlock

15 had suffered during the period? Did you test that? Did you

16 do it?

17 A.   Did the select group of Garlock verdicts versus the

18 prediction of the average amount?

19 Q.   Yes.

20 A.   Not that particular test.

21 Q.   You didn't do it. Because -- can I get the blackboard

22 again?

23   What I mean by validate -- how about we do this and

24 figure out later how to use it -- is, you had the verdict

25 numbers -- and this is the verdicts, what the actual numbers

 1 were. You knew what those were. And you had a regression

 2 analysis that was designed to predict verdict amounts.

 3 A.   The typical verdict amounts.

 4 Q.   Typical verdict amounts?

 5 A.   Based on group --

 6 Q.   And you told me you didn't run this test.

 7 A.   Group characteristics of the claimants.

 8 Q.   One would think, would one not, that there would be some

 9 relationship between what you predicted and what the actual

10 results were?

11 A.   Garlock verdict amounts are in those data to the extent

12 that Garlock lost the verdicts.

13 Q.   I can't hear you. I'm sorry?

14 A.   I said the Garlock verdict amounts are in that data that

15 I used for the estimation, as well. It's a smaller -- much,

16 much smaller sample. So it's not going to be -- going to be

17 more volatile, less representative.

18 Q.   Will be more volatile, but there should be some

19 relationship, should there not?

20 A.   On a case-by-case basis? No, not on a case-by-case

21 basis. You have to look at a pattern across the verdict --

22 Q.   If it's a high value in the tort system, one would think

23 there would be a high value in your regression analysis. If

24 there was a low value in the tort system, you would think

25 there would be a low value in the regression analysis, based

1 on the same materials?

2 A. Across a broad category of cases, but not necessarily on

3 individual cases. Because of wide variation --

4 Q. You might expect some variation.

5 A. I'm sorry.

6 Q. But shouldn't you have some trend that relates the two

7 things together to validate it?

8 A. Depends on the selection that's going on between the

9 cases.

10 Q. Right. So --

11 A. In particular -- excuse me. Let me finish my answer this

12 time, Mr. Inselbuch.

13 Q. But this we know is true --

14 A. Excuse me, Mr. Inselbuch.

15   THE COURT: Let him finish.

16   MR. INSELBUCH: I'm sorry.

17   THE WITNESS: This is important. This is important.

18   The selection that goes on, in terms of the cases

19 that go against Garlock, given the very low likelihood that

20 the plaintiffs have winning a case against Garlock, except

21 when there is very distorted information in the case, the

22 cases that go against Garlock are going to be a highly

23 selected group, more highly selected than cases in general,

24 because of the low likelihood, the very low likelihood that a

25 case could actually prevail against Garlock in a fair trial.

1   So that the only time that you're going to see a

2   case being taken to trial against Garlock, is a case in which

3   you're going to get a likelihood for a potentially very high

4   amount, should the plaintiff prevail. That's the way in which

5   it arrived at its result.

6   BY MR. INSELBUCH:

7   Q.   I accept that --

8   A.   It's no different than the fact that if you looked at

9   average verdicts for other cancer cases, which are known to be

10   the weakest cases in -- against the -- cancer cases against a

11   defendant. The average verdict amount that those is above

12   what mesothelioma amounts are. But that's because -- not

13   because the average case is much higher -- more highly valued,

14   it's that the case that gets tried has to be a much more

15   highly selected case.

16   So the relationship that you're picking, you know,

17   assumes a pattern of the relationship between Garlock,

18   vis-a-vis the other defendants, relative -- according to their

19   relative likelihoods of winning the case is.

20   It's not the purpose of the exercise -- the purpose of

21   the exercise is to get an estimate of the average -- the

22   relative compensatory amount of verdicts for the use of

23   handicapping all of the cases.

24   Q.   Now these values we know. These are actual trial

25   verdicts. You tell us maybe they're high -- higher than would

1 be in a representative sample. Maybe that's true. But then

2 your regression analysis, analyze the same cases, they should

3 come up high too? They shouldn't come up low, should they?

4 Why would they come up low?

5 A.   Why would they come up low?

6 Q.   Yeah.

7 A.   Based on the claimant characteristics relative to typical

8 cases. There's something very special about the way those

9 cases are when tried. We've seen part of what makes those

10 cases special in the testimony in this courtroom.

11 Q.   But in fact, we decided to test whether there was any

12 relationship between the regression analysis and the facts

13 demonstrated by these cases because -- ACC 806.

14   Before you put it up -- take it down. Before you put it

15 up -- what this is, is Exhibit B information coming from

16 material that was prepared by Mr. Cassada's firm. We have

17 eliminated from it the identification of the plaintiffs.

18 We've eliminated from it the jurisdictions. And so that we

19 think since it's aggregate information that's not identifiable

20 to the plaintiffs, we can show this without closing the

21 courthouse.

22   THE COURT: All right. That's fine.

23 BY MR. INSELBUCH:

24 Q.   Okay. So would you put up ACC 806. Here are the 20

25 results --

1 A.   You have the Coltid.

2 Q.   I'm sorry.

3 A.   I was just saying, make sure we can get the

4 identification so we can actually test this --

5 Q.   I can't hear you.

6 A.   I'm sorry. I just needed to make sure that we had the

7 information that would allow us to test it. But you've got

8 the Coltid.

9 Q.   We left those on so you could check.

10 A.   Thank you very much.

11 Q.   Now these are the cases I'm talking about. What we did

12 is, we took a look at that, and we made a list -- put up ACC

13 809 -- for the same cases. And we put in here what Garlock

14 actually paid. And we tried to see whether there was a

15 relationship between what actually happened in these cases and

16 what the prediction says should happen in these cases.

17 A.   That's not what that column is. These are

18 apples-to-orange comparison.

19 Q.   I can't hear you, Dr. Bates.

20 A.   I'm sorry. I'm talking into the microphone. I

21 apologize.

22 Q.   Could you make it a little louder for me?

23 A.   Is there a problem hearing this?

24 Q.   I do. I'm sorry. I have a hearing impairment.

25 A.   Oh, I'm sorry, sir. I'll try and speak up a little more

1 for you.

2 Q.   Thank you.

3 A.   These are not the same thing. This is not a test --

4 one's not testing the other.

5 Q.   It's predicting the verdict and dividing it by 36 is what

6 it's doing, isn't it?

7 A.   This is a small number of selected cases, right, that are

8 not going through the process of which we're talking about,

9 which is the prediction of a case in a fair trial, where the

10 parties and the known information is available.

11   As we've seen testimony in this courtroom, a number of

12 these cases are the very cases, particularly the higher ends

13 of this, are the cases that we know that the information that

14 was relevant for a fair determination of the outcome was not

15 presented at the time of the trial. That's part of what the

16 debtor discovered through its discovery in this case.

17 Q.   In the regression analysis, you took trials as you found

18 them. You didn't have any idea what the evidence was, or what

19 evidence was withheld. You just took the values, did you not?

20 A.   That's the aggregate amount for the damages of the case.

21 That information about the plaintiff was in the case. That's

22 a different -- a different item completely, Mr. Inselbuch.

23 You're confusing two different things here.

24 Q.   But in any event, whether you disagree with it or not, we

25 thought it would be interesting to compare what these actual

1   verdicts were, and what running them through your results

2   would show. Now we graph that and we have Exhibit 809.

3   A.   These are not --

4   Q.   There's no question.

5   A.   They're not a prediction of what it is on the left-hand

6   side. It's not a comparison that makes any sense.

7   Q.   You can say that. We suggest they are.

8   A.   Okay.

9   Q.   This is the relationship we found between your

10 predictions and actual payments in dollars?

11 A.   Not surprising, since the two aren't -- one's not a

12 prediction of the other. You wouldn't expect to see the

13 particular pattern you describe between two things which

14 weren't related.

15 Q.   You would not expect your regression analysis to be able

16 to predict Garlock verdicts?

17 A.   Those were Garlock payments on a selected group of

18 claimants in terms of what I described there, versus what

19 would be Garlock's expected liability extended across groups

20 of claims, in trials that are fair trials for the information

21 and all the parties are treated symmetrically with regard to

22 the liability, not targeted selectively with part of the

23 information withheld.

24   So they're not the same thing. You can't value -- you

25 cannot use one as a basis for "validating the other". It's a

1 false comparison. And you can say it, but it doesn't make it

2 true.

3 Q.   And you evaluated the hundreds of Mealey's verdicts to

4 determine that those verdicts were fairer than the Garlock

5 verdicts?

6 A.   You're not talking about the same thing. We're mixing

7 two particular things there. One is, we're trying to estimate

8 what the total amount in that analysis of the compensatory

9 amount. That has nothing to do with the allocation of the

10 amount.

11   The number -- what drives the amount that you have on the

12 screen here, is the allocation of the amount amongst the

13 parties in a small number of highly selected cases. They

14 aren't the same thing, and it's a false comparison.

15 Q.   We did your 1/36th, which is the allocation you want the

16 judge to adopt.

17 A.   It's not a -- it's a false comparison. It's not a test

18 of the work that I did.

19 Q.   Okay.

20 A.   And it's irrelevant.

21 Q.   Okay. This is what we say, and you say it's wrong. We

22 say there's no predictive quality in your regression analysis,

23 because you wind up with a random spray when you compare the

24 actual payments that Garlock made with your prediction under

25 your regression analysis, divided by 36, or divided by and

1 multiplied by whatever -- the numbers just don't match in any

2 way.

3 A.   Right, but that's not if you --

4 Q.   I know --

5 A.   -- want a more valid comparison of it, what you need to

6 do is look at the chart that I presented, relative to the

7 verdicts that we -- verdict amounts we predicted, and what you

8 get out of the regression line from that. That is a much more

9 highly predictive amount for doing the purpose of evaluating

10 the liability -- the expected verdict amount across groups of

11 claimants which share the same characteristics of age, and

12 life status and jurisdiction. So this is not -- it's a false

13 comparison.

14 Q.   We did another test. We did another test. We said, at

15 least this time we related the same cases to one another. We

16 said, okay. These are the Garlock payments in these cases and

17 Bates' prediction for these cases. These were the dots we

18 got.

19   Because it looked so random, we said what would happen if

20 we put Bates' prediction of these cases in one hat and actual

21 results in another hat and plucked them out at random and put

22 them out there 11 times to see -- emptying the bucket each

23 time, it would look like ACC 809b.

24   That's what yours and the random ones look like. Can you

25 tell which one is yours?

1   A.   Yeah, you select two things which aren't related to each

2   other and picked them at random and put them on a chart. I'm

3   not too surprised you get something that looks like that.

4   Q.   This is again trying to test to see whether or not your

5   regression analysis can actually predict verdicts in Garlock

6   cases against Garlock?

7   A.   It doesn't test that.

8   Q.   That's what we're trying to do here.

9   A.   Doesn't test that.

10   Q.   I would -- I don't want it to be a mystery. The answer

11   is number 10, yours is number 10. Show him 809c.

12   A.   Not a test.

13   Q.   I'm sorry, number six. Let's see which it is. Put up

14   809c. There it is in red.

15   Okay. Let's move on briefly to talk about the future.

16   Put up ACC 808.

17   Now, basically you did the futures conceptually the same

18   way you did the presents, except you didn't have a number for

19   the number of futures. And when you did your regression

20   analysis, you didn't know whether they would be alive or dead

21   when they sued Garlock.

22   And otherwise -- and you needed to use some kind of

23   present value reduction, because these cases would be played

24   out over time. But otherwise it was the same factors that

25   went into the model, did it not?

1   A.   Yes. I mean this would be a simplification of the

2   arithmetic that you could do here to get an equivalent number

3   on the several share calculation, the same way as we talked

4   about before.

5   Q.   And in your report you say when you do this, and with all

6   160 pages of description, you get a number that's less than --

7   A.   A hundred million.

8   Q.   Less than $100 million.

9   A.   Yes. Right, 97 million is less than $100 million.

10 Q.   Yes. In fact, when we go into your code and your

11 materials -- can I have 802a. Can we have "Future Claims

12 Valuation", your number there is 97,296,083.

13   And if you put back 808. We're actually -- we only got

14 this right to the first five digits. Because it's difficult

15 to do the present value each time and come up with a

16 precise -- some rounding error in here. But are you satisfied

17 we came close enough.

18 A.   This would be, you know, these calculations are what they

19 are.

20 Q.   This is what they are?

21 A.   Yes.

22 Q.   So you projected the mesos using some combination of the

23 methodology that you developed at KPMG, and taking account for

24 what you testified the background possibilities and all this

25 other stuff, and you came up with a projection of mesothelioma

1   claims in the future, right?

2   A.   Yes.

3   Q.   And you used that number -- you used a regression

4   analysis again, to figure out what those claims would be paid,

5   but you were 1/3 short in terms of markers. You didn't have

6   age. You didn't have alive or dead at the time the claim

7   would be processed?

8   A.   Right. We had to use a probabilistic notion estimate of

9   what the likelihood that claimant would be alive or dead,

10 based on the historical data.

11 Q.   But then again you still did 1/36th and multiple by 833

12 -- .0833 that was in the calculation?

13 A.   That's the way it works out for the several calculation,

14 yes. The model allows for all the possibilities.

15 Q.   I want to suggest to you all this stuff we have been

16 debating about whether the regression analysis is right, or

17 whether or not you did the right thing in taking out people

18 because of the PIQs, all of that becomes insignificant, does

19 it not, mathematically, because even if you double that number

20 once, you divide it by 36 and multiply .08333, those are the

21 two drivers in this estimation?

22 A.   Well, I mean, you need to know, sort of, all the pieces

23 together. But fundamentally, back-of-the-envelope

24 calculation, knowing that verdict amounts are between four and

25 five million, knowing what the relative percentage of the

1 cases are that could assert contact, knowing within those

2 cases that other parties who will likely, based on the work

3 histories of these individuals, to have been likely to

4 contribute to their disease, and knowing what the jury would

5 have to buy in order for them to -- if they were to win a case

6 against Garlock, what that means about what the jury is saying

7 about liability, then taking account of the likelihood that a

8 jury would find that, you know, yes, that's the way you scope

9 out that calculation which is why you get a number here for

10 the several calculation, is about $100 million. And then

11 essentially we know that this is not representative, so we do

12 a test of that and we find that it's considerably less than

13 $100 million based on what you would get when you take account

14 of the other information you have about the claimant pool

15 broadly.

16   So each of those elements has its role that it plays on

17 that, and that's what essentially drives the calculation.

18 That's -- that's somewhat -- that's sort of how you know these

19 numbers have to be about right, because of that understanding

20 of the situation.

21 Q.   Kind of like the point, right. You want to know whether

22 we got the point, now we dressed it up to look like this.

23 A.   I don't understand what you're saying.

24 Q.   All I'm trying to suggest to you is all this debate about

25 regression analysis, and all this debate about whether or not

1   you should have included 3,932 claimants or 1,755 claimants is

2   kind of washed away once you have two factors that are going

3   to reduce the liability by 1/36th times 3/36th?

4   A.   You change any one of these numbers by essentially a

5   factor of two, you would double the number, cut it in half,

6   that's obvious, and it doesn't matter which one of the four

7   you apply it to.

8   In that calculation, it fundamentally reduces down to

9   that analysis. It's much more complicated when you include

10 the calculations for the joint and several and the hybrid

11 jurisdictions, but in the end --

12 Q.   Which you never did?

13 A.   That's -- you're going to misrepresent that again, Mr.

14 Inselbuch.

15 Q.   Well, you'll be able to show us what the numbers were.

16   So, if I were to summarize this, having listened to the

17 eight days of the science case presentation, what you're

18 saying in effect is, the 1/36th and .08333 are handicapping of

19 Garlock's success, either through its chrysotile defense,

20 which says you can't get mesothelioma from exposure to

21 chrysotile. Or its low-dose defense that says, our bucket in

22 the ocean means you can't -- we were not a causative factor.

23 Or a combination of those two which would have the effects of

24 reducing Garlock's shares. And that's really what the 1/36th

25 is and .08333 are all about, is it not?

1 A.   I wouldn't describe it quite that way. I would describe

2 it more as the verdict history that we have which had the

3 .08333, gave us an indication of what the cases that the

4 plaintiff selected to take to trial in an information regime

5 where the plaintiffs were willingly espousing and making the

6 case, if you will, against the other defendants as well as

7 Garlock, the insulation defendants.

8   And in those cases where Garlock was to lose is a case in

9 which the plaintiff is essentially -- the jury is essentially

10 buying into the plaintiff's argument that each one of the

11 parties is liable and contributed to the exposure, and to the

12 disease, through its exposure that it -- it's provided. And

13 hence, is likely to divide it up treating each one

14 symmetrically, dividing it up pro rata between them. That's

15 the way the description goes.

16   We know there are more exposures than that, typically,

17 but that's the number that would be identified and the

18 comprise accepted for the purpose of coming up with that

19 allocation.

20 Q.   These 1990 verdicts were during the good period when

21 Garlock had the advantage of the big dusties in the courtroom,

22 and no lack of information supplied by the plaintiffs.

23   We're going to use that 3/36th to show what the

24 likelihood is of Garlock succeeding and the plaintiff

25 succeeding, but we ignore the other data from those three

1 cases, which as we've shown before, if you looked at the

2 actual data in those cases, your estimates would dwarf the

3 estimates that the committee and the future representatives

4 put in?

5 A.   No, that's not a proper characterization of it. Because

6 those cases that you're talking about, those three cases are

7 only a small number of what the outcome is.

8 Q.   Now the people that you're estimating here, you have said

9 they had to have mesothelioma to go into your estimate?

10 A.   Correct.

11 Q.   And they had to have at least asserted exposure to

12 Garlock products?

13 A.   Correct.

14 Q.   Right?

15 A.   Correct.

16 Q.   Now, so not only we have people going to trial who have

17 mesothelioma and who have asserted proof of Garlock exposure.

18 And what -- and what you're suggesting, I guess, is that after

19 all of those trials are in, because of the persuasive quality

20 of Garlock's science defense or some other defense, Garlock

21 would only pay something like two-tenths of a percent of all

22 the verdicts that would ever be rendered across all of these

23 trials?

24 A.   Can you show that calculation, the two-tenths of a

25 percent?

1   Q.   Sure.   One over 36 times three over 36 is something that

2   comes out to .2 percent.

3   A.   Okay.

4   Q.   You want to check it?

5   A.   I'm fine. Go ahead.

6   Q.   I think that's the issue then, for this court. Is it

7   likely that over all of these cases where Garlock is faced

8   with a claimant, a dying or dead plaintiff who has

9   mesothelioma, who can show exposure to Garlock asbestos,

10   notwithstanding his exposure to all other kinds of asbestos,

11   over all of these trials from here to forever, Garlock will

12   only pay two-tenths of one percent of the findings of those

13   juries over time?

14   A.   Of the potential amount.

15   Q.   Yeah.

16   A.   Well --

17   Q.   A --

18   A.   Assuming what we have is the potential amount of the

19   verdicts, the combination of the economic and noneconomic

20   damages for those cases. If you have, essentially, that this

21   is -- that is what the data show. That in fact Garlock is

22   likely to win virtually all of the cases against it, the

23   information -- the broader analysis we did is likely in cases

24   which it's involved in, is likely to win 99 percent of those

25   cases, not even the percentage that we have here based on the

1 settlement data of the 2000s itself, and in those cases where

2 the plaintiff buys into that -- the jury buys into the theory

3 that the plaintiff is putting forward, there are in fact at

4 least -- there are and typically -- I don't want to say

5 typically. There are at least 35 other parties who can be

6 identified, who would essentially be in the same exposure

7 position with regard to Garlock with regard to that claimant.

8 So that is the calculation. It's not -- that that's the

9 results of the analysis that we've done.

10 Q.   But that's the effect of it?

11 A.   Sure.

12 Q.   Now, when you did your regression, you put in numbers

13 based on the jury verdicts that were reported to you. Do you

14 know what numbers were put in for New York?

15 A.   I'm sorry. I didn't understand your question.

16 Q.   Well, you went out into these 400 and 500 verdicts that

17 you found in Mealey's. And you found -- and you found them

18 from various jurisdictions?

19 A.   Right.

20 Q.   And you found out the best you could how old the

21 plaintiffs were?

22 A.   Right.

23 Q.   Whether they were alive or dead?

24 A.   Right.

25 Q.   The best -- you gathered all that. Do you remember what

1 you found, found -- what data you had for a 50-year old living

2 in New York?

3 A.   Off the top of my head, no. We would have to look at the

4 database.

5 Q.   We could look at the data and you said in your data

6 $11,647,991?

7 A.   Is that a typical one or is that a particular

8 observation?

9 Q.   Well, had to be a particular observation --

10 A.   No.

11 Q.   -- because that's from your data.

12 A.   Okay. So you're talking about a verdict in New York with

13 a 50-year old --

14 Q.   I guess so.

15 A.   That's part of the data.

16 Q.   And he was alive.

17 A.   Okay.

18 Q.   Now if he's dead, he only gets $7,570,405?

19 A.   You're talking about the predictions through the

20 regression analysis now --

21 Q.   Yeah.

22 A.   -- because you got two different amounts for the same

23 individual both alive and dead. So it's obviously not a

24 record. That's what I was trying to understand.

25 Q.   This is in your report at paragraph 105.

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1   A.   Excuse me. Let me look at that. Report on paragraph

2   105? I don't think that's right.

3   Q.   It's in the backup, I'm sorry. I'm corrected. It's not

4   in your report. It's another number not in your report. It's

5   in the backup we found this.

6   But in any event, are you aware that about a week ago

7   there were five verdicts in New York?

8   A.   I've heard that.

9   Q.   And that two of the verdicts for living -- one a living

10   plumber, one a living painter and laborer, mesothelioma, each

11   was $60 million?

12   A.   I've heard that.

13   Q.   And one verdict for a dead plumber was $30 million?

14   A.   I've heard that.

15   Q.   And two verdicts for dead steamfitters were each

16   $20 million?

17   A.   That's what I heard.

18   Q.   If you added those into your database, would it matter?

19   A.   I have to do the work to find out.

20   Q.   We did, and we suggest it would add about 8 percent

21   across the board. You can check that and see.

22   A.   I think you have to find out what the eventual outcome of

23   those cases are too. A lot -- the higher the verdicts are,

24   the more they tend to get knocked down by subsequent

25   evaluations.

1   Q.   Now you and Dr. Gallardo-Garcia told the court that this

2   was a very robust dataset. In fact, we estimated that if we

3   printed out the dataset, it would make a pile larger than

4   100,000 copies of your report, and it would stand about a mile

5   and a half high.

6   A.   Sounds like a lot of data.

7   Q.   It's a lot of work. Now -- and the calculations to get

8   to your opinions are not even in here. They're in a different

9   dataset, which I haven't estimated how big that is, but it's

10 big too.

11 A.   It's big.

12 Q.   Huh?

13 A.   It's big.

14 Q.   It's big. But in fact you used very little of this data

15 in preparing your opinion?

16 A.   That's incorrect.

17 Q.   The 8.3 percent comes from one memorandum from

18 Mr. Cassada?

19 A.   No.

20 Q.   All right. The 1/36th share comes from looking at 500 or

21 700 claimants' files between tort defendants and others, 500

22 tort defendants, 265 claimants who filed trust claims?

23 A.   In the context of the rest of the data that we have, yes.

24 Q.   And that's the 1/36 and .08333 and regression comes from

25 looking at 4- or 500 case file, reports?

                 Laura Andersen, RMR 704-350-7493

1   A.   No. Case files? They come from publicly available data

2   that are reported on plaintiff verdict amounts.

3   Q.   It's not a very large dataset for work?

4   A.   There's several hundred of them, yes.

5   Q.   Not a mile and a half high?

6   A.   It's not all the data, no. Only a portion of the data.

7   Q.   Now I want to just turn briefly, before I turn you over

8   to my colleague, you talked about the trust that Garlock

9   proposes. And I would like to put up -- I don't know whether

10   you have -- do you have his demonstratives?

11   I would like you to look at page 72. You put this up on

12   your direct and you have -- you see what the trust would do

13   for this fellow. You have a fellow who is 64 alive, a gasket

14   cutter. That's all he did was cut gaskets. He had direct

15   contact. The state was Illinois. He had no other

16   co-defendants. And the only other claim he could make would

17   be against the Manville Trust, because they supplied,

18   presumably, the asbestos materials that were put into the

19   gasket material. You said under the analysis of the trust,

20   this fella would get a million fifty-thousand dollars. Do you

21   remember that?

22   A.   Yes.

23   Q.   Now, of course, Illinois is a joint and several liability

24   state.

25   A.   That's my understanding.

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1 Q. So, do you know going back into your data, what someone

2 in Illinois would get under your regression?

3 A. This individual, at 64?

4 Q. No, not this individual. Any individual in Illinois.

5 A. Well, I don't have it in front of me.

6 Q. You don't have it in front of you.

7 A. It can be guesstimated.

8 Q. We looked and in Illinois it's $6,664,460 for someone

9 about this age.

10 A. That sounds about right.

11 Q. Okay. Of course if you did it in New York it might be

12 $11 million or seven million --

13 A. Depending on the age.

14 Q. -- depending on the age.

15   And of course, if we tried it last week in New York, it

16 could be $60 million, or 20 million or 30 million.

17   But if we used your average from the -- even eliminating

18 the 1,755, if you looked at just the average for the 2,177

19 cases that you worked with, you get a number that's just north

20 of $4 million.

21 A. Because the average age is seven years older.

22 Q. Somewhere --

23 A. Eight years older.

24 Q. The lowest number I can find for the verdict here in all

25 of this, your average, is $4 million -- $4.3 million.

1   Now the Manville Trust we showed you, do you know how

2   much they will pay this man?

3   A.   Somewhere around 20 -- 30,000.

4   Q. $26,250. So when this fellow gets your offer for a

5   million fifty thousand dollars, is he going to take it?

6   A.   Yes.

7   Q.   He's not going to go to the tort system and collect

8   $4 million or $6 million?

9   A.   He runs a very high risk of losing that case if he takes

10 it to trial.

11 Q.   Yes. And even so, you think everybody is going to accept

12 these numbers and not go to trial?

13 A.   I think that's a fairly high percentage likelihood of

14 winning relative to the history that would give this a million

15 dollar settlement. This is a pretty good settlement offer.

16 Q.   This is a fellow who can't lose against you?

17 A.   Sure he can.

18 Q.   How does he lose when the only thing he did was cut up

19 your gaskets?

20 A.   Because basically the cases, as we've seen presented

21 here, on whether or not gasket cutting can contribute to the

22 disease at all.

23 Q.   So based upon the eight days of the science case, you

24 think this fellow would think, my goodness, I have a really

25 good chance of losing this case, so I'm going to take

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 1 25 percent on the dollar, or 10 percent on the dollar to

 2 settle it?

 3 A.   I think that it's a very high likelihood that this

 4 individual would take the case (sic) rather than take it to

 5 trial, yes.

 6   MR. INSELBUCH: I'm glad you're not representing

 7 him.

 8 Q.   All right. Finally, Dr. Bates. It's correct that

 9 through May 31st of this year, you have applied for

10 compensation through this court of $13,380,365.50?

11 A.   Sounds about that.

12 Q.   And that doesn't include your deposition or attending

13 this trial or testifying at this trial?

14 A.   Correct. A lot of work.

15 Q.   A lot of work.

16   MR. INSELBUCH: I pass the witness.

17   THE COURT: All right. Mr. Guy.

18   THE WITNESS: Thank you, Mr. Inselbuch.

19   MR. INSELBUCH: Thank you, Dr. Bates.

20   MR. GUY: Would you like to wait for lunch?

21   THE COURT: I would like to try to finish at least

22 cross-examination first.

23   MR. GUY: Thank you, Your Honor.

24   Is it okay if I question the witness from here?

25   THE COURT: Sure.

1   CROSS EXAMINATION

2   BY MR. GUY:

3   Q.   Dr. Bates, my name is Jonathan Guy. I represent the

4   Future Claimants Representative, Mr. Grier.

5   A.   Good afternoon, Mr. Guy.

6   Q.   We met before, correct?

7   A.   Numerous times.

8   Q.   And you have a degree in economics?

9   A.   I do.

10   Q.   Now, because I have a degree in economics, I think I can

11   make this joke.

12   A.   Please no economist jokes. My wife told me one the first

13   time we met.

14   Q.   We're going to bring it into --

15   THE COURT: Does that mean you'll marry him if he

16   tells you this joke?

17   THE WITNESS: He may be a fancy dresser, Your Honor,

18   but that ain't gonna happen.

19   BY MR. GUY:

20   Q.   You know this joke. You're on a desert island --

21   A.   Oh, yes, I do know this joke.

22   Q.   You've got nothing to eat?

23   A.   This is a can of beans?

24   Q.   Well, just work with me. And you have a physicist with

25   you, right?

1   A.   I have a physicist with me.

2   Q.   And all you have is 1,000 cans of Spam.

3   A.   Spam?

4   Q.   Let's make it bologna. Okay. And the question is, how

5   do you open the can because no one has a can opener. The

6   physicist says, well, you know, let's bang it with a rock.

7   Let's find a really heavy rock, dense material and bang it

8   with a rock.

9   The chemist says, we'll build a fire, see if we can get

10   some sort of chemical reaction.

11   And the economist says --

12   A.   We'll assume we have a can opener.

13   Q.   Okay. So what we're going to try and determine today is

14   whether the assumptions you're making are in the can opener

15   realm or whether they're in the realistic realm.

16   A.   Right.

17   Q.   Now, if the court agrees with you and estimates Garlock's

18   asbestos liability at $125 million or less, that means that

19   all the solvent defendants out there are going to have to pick

20   up a greater proportion of Garlock's share than was

21   represented in its financial statements, correct?

22   A.   I'm not sure that's right, given the analysis that we've

23   done.

24   Q.   Well --

25   A.   Cause Garlock would be -- depending on how much money is

1 set aside to pay Garlock, it would be covering its liability

2 and expected liability for those cases. And there would be

3 no -- as the analysis here has shown, there would be no

4 liability transfer. It could affect the defense costs for the

5 other individuals, the co-defendants which may affect their

6 settlements that way, but it wouldn't be a liability transfer.

7   That's what we discovered in this case here in our

8 analysis, how much was liability transfer from the other

9 defendants versus how much of it was defense cost increase.

10 Q.   Dr. Bates, but you agree with me, that there's a big

11 difference between $125 million, and the numbers that Garlock

12 was paying -- and I understand that you have a position and

13 the debtors' have a position that those numbers were

14 inflated -- but there's a big difference between $125 million

15 and the hundreds of millions of dollars that the debtor was

16 paying prepetition, correct?

17 A.   The 125 is less than 500, yes.

18 Q.   And it's less than a billion, isn't it?

19 A.   It's less than a billion too.

20 Q.   So, in effect, the debtor gets a free pass that isn't

21 available to any solvent defendant, correct?

22 A.   I don't know what a free pass is in this context.

23 Q.   Well, it's paying less than it would have to pay in the

24 tort system, right?

25 A.   And in the tort system it was paying more than its

1 liability.

2 Q.   Understand.   Now in all the cases that you've worked on,

3 all the bankruptcy cases other than Bondex, are you aware of a

4 single court that has estimated what would have to be paid to

5 resolve a company's asbestos liabilities under the process

6 that you want to apply today?

7 A.   As I said, we've not been in position of trying to

8 distinguish between what was cost avoidance versus liability

9 in matters prior to this time.

10 Q.   So that would be no?

11 A.   That would be no.

12 Q.   Now, are you aware of a single solvent defendant

13 anywhere, that estimates what it will have to pay for current

14 and future claims to resolve its asbestos liabilities that

15 applies the model that you want the court to apply here?

16 A.   Well, the modeling framework borrows on the same concept.

17 But again, it's the difference between what's an expenditure

18 and what's a liability. And simply giving them the same label

19 to call them both the same thing doesn't make them the same

20 thing, they're two different things.

21 Q.   So the answer would be no?

22 A.   One is an accounting concept done for an accounting

23 purpose and a disclosure purpose about expenditure. The other

24 is an analysis about how much of that expenditure is

25 attributable to liability versus cost avoidance.

1   Q.   Dr. Bates, I'm trying to get you off quickly so that we

2   can get Mr. Magee on and off today. You agree with me the

3   answer's no?

4   A.   As I just described.

5   Q.   Now, your analysis is very different from the approach

6   that Dr. Peterson and Rabinovitz used, correct?

7   A.   Well, they share some common elements, but they're very

8   different in others, yes.

9   Q.   And I think you said what distinguishes between the two

10   approaches is one is an observable amount, correct?

11   A.   Yes.

12   Q.   Which is what Dr. Rabinovitz and Dr. Peterson --

13   A.   Settlements are observable.

14   Q.   And the other is not directly observable, correct?

15   A.   That's right.

16   Q.   And you know who Dr. Heckman (phonetic) is?

17   A.   I do.

18   Q.   That's Coltec's expert?

19   A.   I know him outside of that context. I know of him

20   outside that context. I don't -- only met him twice before.

21   Q.   Now, he characterized what you did, not in a pejorative

22   way, I want to be clear. He characterized what you did as an

23   idealized approach, remember that?

24   A.   I understand what he meant by that. I think it's my

25   description of the analytical distinction between the

1   liability versus the cost avoidance as I describe.

2   Q.   Now Dr. Bates, one of the main things that I take away

3   from your report is that -- and one of the things that I find

4   hard to reconcile, is that you say of the hundreds of cases

5   that are pending, and what will be something like 26,000

6   future meso cases, right -- a lot of meso cases in the future

7   under your model?

8   A.   There's a lot of individuals who have had contact with

9   Garlock's product, yeah.

10 Q.   And that's based upon your version of the Selikoff model.

11 So you're comfortable that there's going to be at least 26,000

12 meso cases in the future?

13 A.   Yes.

14 Q.   Now your analysis says to the judge, please accept my

15 view that 95 percent of those cases have no trial risk, zero,

16 correct?

17 A.   Nil.

18 Q.   Now -- Dr. -- I've just promoted you -- Mr. Inselbuch

19 went through a lot of questions about the ratio. But just so

20 we have it in the record, you do agree that it's the actual

21 cases we know that went to trial for the whole period for

22 Garlock, 24 percent loss rate, right?

23 A.   Throughout the time, entire history, yes.

24 Q.   And we have your database, and it lists lots of the

25 actual people we know have existing claims there are

1 pipefitters, correct?

2 A.   There are pipefitters in there.

3 Q.   Machinists?

4 A.   Yes, they're in there.

5 Q.   People who are all in Mr. Henshaw's category one --

6 A.   Yes.

7 Q.   -- right. So you're saying that 95 percent of those

8 guys, zero trial risk.

9 A.   Well, it's done -- it's different by contact group.

10 Q.   Now, you also know from the database that people in that

11 contact group, the pipefitters settled for amounts

12 significantly less than what they could obtain at trial, do

13 you agree with me, sir?

14 A.   Parties tend to discount what they could get at trial

15 based on the risks they face. There's also the alterative

16 sources of compensation for them.

17 Q.   And so they're settling for a lot less than the trial

18 risk amount, right?

19 A.   I'm sorry. Generally you're settling for more than the

20 trial risk amount on an individual case.

21 Q.   So when a 31-year old --

22 A.   Expected trial risk amount. You have to handicap the

23 process.

24 Q.   Okay.

25 A.   Got to include the likelihood of winning in that. They

1   are almost by definition settling for less than the total

2   outcome, but depends on the liability likelihood. There's a

3   small number of cases where that number comes out to be

4   100 percent, but that's truly a small number of cases.

5   Q.   Now we all heard the science trial. That was a mini

6   trial, wasn't it?

7   A.   I listened to it, yes.

8   Q.   That's what a jury would hear, right?

9   A.   At least some portions of that, yes.

10   Q.   The only difference is, we didn't have someone sitting in

11   the courtroom attached to an oxygen tank who was going to die

12   in the next few weeks?

13   A.   Or the jury.

14   Q.   And you agree that juries find mesothelioma victims

15   fairly sympathetic, don't you?

16   A.   Yes.

17   Q.   And you agree with me that juries take into account all

18   sorts of things when they decide what the verdict will be,

19   which will be including the conduct of the defendant, correct?

20   A.   Yes.

21   Q.   And you're saying that when you have a 31-year-old -- and

22   this is from your database pipefitter with mesothelioma, that

23   when he's settling for $64,000, he's actually getting a really

24   good deal and there's no trial risk?

25   A.   Based on, you know, the analysis, yes. It is what it is.

1 Q.   How could a 31-year-old, from your database possibly have

2 been exposed to insulation? You don't know?

3 A.   Lots of different ways people could get exposed to

4 insulation.

5 Q.   And that would very much change the dynamics for

6 Mr. Grier's clients coming in the future, correct? Because

7 the 36 co-defendants, most of those -- many of those are

8 insulators, aren't they?

9 A.   So you're talking about the fact that there could be

10 exposures past the time period when they were insulation

11 exposures, past the 1979 period?

12 Q.   Yeah. Your model isn't taking into account, that

13 insulation was taken out of the marketplace long before

14 Garlock's gaskets were taken out of the marketplace?

15 A.   Yeah. I think we heard the testimony in here that the

16 controls for gaskets went into place about a decade after they

17 did for --

18 Q.   My only question, Dr. Bates, is, your model isn't taking

19 that account?

20 A.   Yeah. Well I heard that testimony in this courtroom as

21 well --

22 Q.   Is that yes or no, sir?

23 A.   -- so I went and looked at that to see whether or not it

24 would have an impact. And it basically makes a very small

25 difference given the exposure rates that are outlined by

1 Mr. Henshaw. It's only a few dozen cases, additional cases

2 over time.

3 Q.   But we only have a few dozen cases because there's a long

4 latency period for mesothelioma?

5 A.   No. I mean, in the future, by adding the insulation --

6 by adding the gasket exposures for an additional decade, only

7 increases the incidence of disease in aggregate by a few dozen

8 cases. So it doesn't materially change the conclusions that

9 we have in there in the farthest into the future. I think you

10 can take some comfort from that.

11 Q.   I want you to assume, Dr. Bates, that we have to get

12 Mr. Grier comfortable that there's enough money set aside for

13 people who bring claims in the future up to like 2050.

14 A.   Sure.

15 Q.   And to get Judge Hodges comfortable there's enough money,

16 he's going to be looking to Mr. Grier to tell him he's

17 comfortable.

18   Now, your analysis can't possibly tell us what the right

19 amount is to put into a trust when the only co-defendants are

20 people that make gaskets and exclude insulators. Do you agree

21 with me?

22 A.   No. No. There are other co-defendants that will exist

23 at that time, and the number of those cases that there will be

24 is small. I mean, I heard that testimony as well, and I

25 wanted to make sure that I understood what that was. And it

1 simply only increases the numbers a few percentage points.

2 And given the cushion that I have and the estimate that I did

3 about the liability likelihood, it doesn't actually change the

4 conclusion. And you can take account of those additional

5 exposures.

6   So there will be, within the amounts that we laid out,

7 with the contingency that we talked about within the plan,

8 there will be sufficient money to cover that. So I think

9 Mr. Grier can be comfortable with that number.

10 Q.   Dr. Bates, I want to turn to defense costs.

11   As I understand it, what you're saying is, defense costs

12 are a controlling factor in these settlements, correct?

13 A.   Defense costs are the dominant factor in the vast

14 majority of settlements.

15 Q.   And when Mr. Magee gets on the stand, you won't be able

16 to ask him about that, and I know that you weren't involved in

17 the settlements, but we'll wait for that later.

18   But from your slides you show the court that defense

19 costs go down to zero after trial, right? Or at trial,

20 effectively the chart goes like this and then boom?

21 A.   That was a representative case. In fact, that was a case

22 that settled, so it doesn't represent all of the potential

23 avoidable costs that could be in a case. That was a simple

24 case that ended, essentially, at the end of trial, so there

25 were no more future expenses, very little expenses on that

1 case.

2   But in fact, for an actual case that you're trying to

3 handicap, you'd have to take account of the fact that there

4 could be expenses associated with appeals, expenses associated

5 with trying to get contribution and so on. So there are

6 avoidable costs, it's just how much of the avoidable costs

7 there are, depends on where you are in the process.

8 Q.   Right. Dr. Bates, I'm trying to get to this very simple

9 point.

10   If defense costs are the controlling factor and there's

11 no trial risk, are you aware of any situations from your

12 review of the database, where Garlock settled after trial?

13 And if so, why are they doing that?

14 A.   Because --

15 Q.   If no trial risk?

16 A.   There can be future -- there's a number of factors that

17 come in. These are very specialized kinds of cases. So it

18 depends on the costs and the risks that they face. From that

19 point forward, there's no difference in the analysis. There's

20 costs for appeals, risks associated with appeal.

21   So, you know, again, we're talking about handicapping an

22 additional process, which is the appeal and the process of

23 appeal. A lot of cases settle -- a lot of -- not a lot, very

24 few cases take to trial. But those cases do go to trial, tend

25 to settle subsequent to the trial, even with a plaintiff

1 verdict for amounts that are different from the verdict.

2 Q.   And trial risk is irrelevant here?

3 A.   It's a different kind of risk.

4 Q.   It's not an issue, is it?

5 A.   It's an appeal risk.

6 Q.   The risk of losing?

7 A.   Or winning, right. The biggest case that we have on

8 record settled for a very significant discount off of what the

9 face value of the trial was, post the trial. That's what

10 that's a reflection of, is the party's evaluation of how they

11 will deal with the appeal. Which in that case is -- probably

12 dominates the cost issue. Well that's actually not true.

13 Because that was a very material part of that case, which is

14 what's the cost associated with trying to post the bond to be

15 able to make the appeal was a very, very important

16 consideration, so.

17 Q.   Dr. Bates, I'm trying to get you off so we can get to

18 lunch.

19 A.   Well, as you can tell, I haven't missed too many meals so

20 I want to make sure we have an accurate statement.

21 Q.   I understand.

22   Now, there are cases where Garlock settled after trial,

23 right?

24 A.   Certainly. Most cases for which went to trial for which

25 it then had a -- there was some appeal going on, they settled

 1   after trial.

 2   Q.   And some of those are referenced in your report, correct?

 3   A.   Yes.

 4   Q.   In fact, there's a chart on your report?

 5   A.   Yes.

 6   Q.   I think it's page 84. I'll represent to you they're

 7   there, sir, so we can move forward. You would agree with me,

 8   that when Garlock settles after trial, it's settling because

 9   it is concerned that it will lose either at the verdict stage

10   or following an appeal? You right -- am I right?

11   A.   And the costs and risks associated.

12   Q.   Yeah.

13   A.   Both considerations come into play. But in the presence

14   of once we've gone through the trial cost phase of it, those

15   are no longer the avoidable costs, but there still remain

16   elements of risk and cost associated with the decision on a

17   small number of cases. But it's -- those elements come into

18   play, are there as well.

19   Q.   Okay. Now moving on to the issue of defense costs

20   increasing after the bankruptcy wave. What I took away from

21   your testimony and your report is -- all right, there are

22   fewer solvent defendants in the courtroom. We have to work up

23   our cases to defend against the plaintiffs. We have to spend

24   more money, and therefore our defense costs are going up.

25   Therefore, we're willing to pay more to resolve those cases to

1   avoid other defense costs. Do I have that right?

2   A.   Essentially, what it had to do was start establishing --

3   it had to basically establish what the case for the

4   alternative exposures would be, because it no longer got that

5   as part of the initial deposition of the plaintiff, in the

6   same way it had in the past. So it has to find a substitute

7   for that.

8   Q.   Dr. Bates, I believe you said defense costs doubled in

9   the 2000s?

10   A.   No. No, it was much higher than that.

11   Q.   More than double?

12   A.   Are we talking about avoidable costs or what it would

13   cost to defend the case or what they actually spent?

14   Q.   What you spent.

15   A.   What they spent doubled.

16   Q.   Okay.

17   A.   So that's not the same as what they avoided by settling.

18   Q.   Okay.

19   A.   The point is, they spent what they had to avoid having

20   that defense cost number go up much, much, more, and the other

21   difficulties that they would have in trying to defend a much

22   broader array of cases, they paid more in settlements to get

23   rid of most of the cases.

24   Q.   Dr. Bates, so we have this clear. In the real world in

25   the 2000s, was Garlock on average paying more in defense costs

1   per claim, yes or no?

2   A.   Sorry. Your question, they paid more to defend cases,

3   and they paid much more because of the prospects of paying

4   even much higher defense costs. That's what the analysis

5   shows.

6   Q.   Well, let's pull up the table showing the --

7   A.   Sure. That's what we were just describing.

8   Q.   So in 1997 Garlock's defense costs from your report were

9    $11 million, right?

10   A.   That's my understanding.

11   Q.   Then by 2009 they'd gone up to $28 million, correct?

12   A.   That's my understandings.

13   Q.   And they peaked in 2005?

14   A.   Sure. These are incurred costs, not avoidable costs.

15   Q.   So if you're right, we would expect to see on average,

16   because the debtors are going to have to do so much more to

17   prepare these cases, we heard about that. We heard that from

18   Mr. Magee. They're working so much harder than they ever have

19   to work before, you would expect to see the average per claim

20   going up, wouldn't you?

21   A.   Not -- no.

22   Q.   Well, and in fact we didn't, did we?

23   A.   You're making a fundamental error between what are

24   avoidable costs, versus what are costs incurred.

25   Q.   But it has to be based on their experience, Dr. Bates.

1   A.   I'm sorry.

2   Q.   This is the testimony of the debtors. They said they

3   have to spend so much more.

4   A.   They would.

5   Q.   And after experiencing that, then they got gun shy and

6   they said, well, we're going to stop doing that so we'll

7   settle. You would have expected to see the average going up

8   dramatically, wouldn't you?

9   A.   Not the way their defense was.

10   Q.   In fact, they spent more money in total -- we've heard

11   about their defense costs doubling, that's a little cute

12   though, because their defense costs doubled, because the

13   number of claims filed against them doubled. Do you see that?

14   Do you agree with me? It's from your report.

15   A.   You're still mixing up two fundamental concepts.

16   Q.   Now, I want to turn to the age issue. Mr. Inselbuch

17   covered this a little bit. I don't want to be duplicative.

18   What you're saying is, settlements don't change for age, and

19   therefore we can assume the settlements are always being

20   driven by defense costs. Do I have that right?

21   A.   What I'm saying is, the pattern of mixture between

22   liability concerns and defense costs shows up in a pattern

23   across settlements, not -- you can't tell this from any

24   individual settlement, you tell it from a pattern across

25   settlements.

1   Q.   And you looked at life status, age of claimant, and

2   jurisdiction in your model to determine that, correct?

3   A.   It's one -- those are several of the factors that I

4   controlled for, so that we would not be mixing --

5   Q.   Well --

6   A.   -- probably mixing things.

7   Q.   Those are two out of three, aren't they?

8   A.   Yes.

9   Q.   Okay. Now, so we move through this quickly. I'm going

10 to ask you if the following factors in your view -- I know

11 you're not a lawyer and you're not a trial lawyer, but you

12 worked in this field for a long time. In your view, whether

13 these variables could affect verdict values. Yes; no; I don't

14 know.

15   Claimant employment status?

16 A.   Affect the economic damages, sure.

17 Q.   Education levels?

18 A.   Yes, that can affect the economic damages.

19 Q.   Marital status?

20 A.   Yes, that could affect both the economic and the

21 noneconomic damages.

22 Q.   Number of dependents?

23 A.   Absolutely.

24 Q.   Medical expenses?

25 A.   Yes. All are in economic damages.

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1 Q.   Job?

2 A.   Absolutely the economic damages.

3 Q.   And you saw this in the courtroom last couple of weeks,

4 experience and skill of the plaintiff's attorney?

5 A.   That probably affects the noneconomic damages. Probably

6 could affect -- the economic damages are probably less

7 affected by that than the noneconomic damages. But yes, it

8 will affect the amount.

9 Q.   And the skill of the defense attorney?

10 A.   Sure. Both the liability and likelihood.

11 Q.   You agree the facts of the case would have an impact on

12 the verdict?

13 A.   Certainly.

14 Q.   Proof of exposure, correct?

15 A.   Affect liability likelihood can bleed over into liability

16 share.

17 Q.   Duration of exposure?

18 A.   Probably affect the liability likelihood.

19 Q.   Intensity of exposure?

20 A.   Probably affect the liability likelihood.

21 Q.   But your regression model just addresses dead or alive

22 age and jurisdiction --

23 A.   That's the information which we have observations on.

24 Through all of the regressions, the age -- the question is

25 whether or not any of those variables you identified there

1   actually affect the value of the outcomes based on age. But

2   the real question is, as far as the test goes is, can we

3   observe the impact of age on the settlement amounts which we

4   do know affects the liability amounts. And all of these other

5   factors, they can affect the size of the settlements, the size

6   of the settlements and hence the verdict amounts as well. But

7   the real question there is, you can -- that the impact of age

8   is a very strong factor which we know from studying the

9   verdict amounts, is -- that affects the size of the verdict

10 amounts that we see, regardless of these other factors.

11 Q.   Dr. Bates, I don't want to repeat what Mr. Inselbuch did

12 on the prebankruptcy world that you did, but do you agree with

13 me that the expenditure estimates that you did prior to the

14 bankruptcy filing were intended to estimate the expenditures

15 that Garlock would have to make to plaintiffs to resolve

16 claims?

17 A.   Yes.

18 Q.   And do you understand --

19 A.   In the context of the litigation environment over which

20 the settlements are taking place. That's why we have the

21 alternative estimates there, because we expect to see both

22 different litigation environments in particular different

23 information regimes being possible outcomes.

24 Q.   In the context of the real world?

25 A.   Yes, the real world.

1   Q.   And you know that the judge has asked the parties,

2   regardless of which model they want to use, to estimate the

3   aggregate amount of money that Garlock will require to satisfy

4   present and future mesothelioma claims?

5   A.   I understand that's in there.

6   Q.   Now, one of the things that we're going to have to get to

7   at one point, but we're not there yet is, we're just talking

8   about mesothelioma claims now, right?

9   A.   Yes.

10   Q.   Now we know there are other claims out there, there are

11   lung cancers?

12   A.   Yes.

13   Q.   Would you agree with me that lung cancers -- we're likely

14   to see an increase of lung cancers going forward in the

15   future, generally not against Garlock?

16   A.   It depends on how lung cancer claims are -- whether more

17   of them come into the tort or not.

18   Q.   And you actually testified in connection with the FAIR

19   Act. That's in your CV, right?

20   A.   Right. But that's in the context of having a trust

21   system which paid lung cancer claims of substantial amounts of

22   money, even if they had history of smoking.

23   Q.   Are you aware as to whether or not there was an increase

24   in the tort system today, post bankruptcy, of lung cancer

25   claims being filed against asbestos manufacturers, one way or

1   the other?

2   A.   So there's been a recent increase of a small number of

3   lung cancer claims after a very significant drop in them. The

4   lung cancer claims tend to be derivative of the recruited

5   nonmalignant claims, as a certain portion of that population

6   would develop lung cancer too, have lawyers and hence lead to

7   follow-on claims. Those numbers dropped dramatically at the

8   same time as the non-malignant claims did. There's recently

9   been advertisements on TV -- and everybody watches some of

10 these at times -- recruitment for lung cancer claims to file

11 them with the trusts, are the kinds of things I was talking

12 about could have happened in the FAIR Act. Much more

13 complicated here because there's multiple trusts.

14   But in the nontrust and the tort defendants that I've

15 seen, they've had, in recent period, a small lift upward in

16 the number of lung cancer claims they've seen, nothing like

17 they used to see in the past. But there's been some increase

18 in those.

19 Q.   Dr. Bates, if you were to apply a multiplier to whatever

20 number relates to the mesothelioma liability to address these

21 other claims, lung cancer, asbestotic, whatever they may be, I

22 think you said in your deposition an appropriate number would

23 be 1.15. Do you agree with that?

24   DEBTOR: Your Honor, I object. This is not a trial

25 to estimate lung cancer claims.

1   THE COURT: I sustain the objection.

2   BY MR. GUY:

3   Q.   Now I want to get back to the can opener. You calculate

4   the pending and future claims at $125 million or less NPV?

5   A.   For the liability portion, yes.

6   Q.   And you don't include defense costs in that at all,

7   correct?

8   A.   Neither implicit, avoided costs, or actual defense costs.

9   Q.   But it's quite possible that a number of these plaintiffs

10   won't accept the settlement, they'll want to litigate and the

11   TDP allows them to go into the tort system. Do you agree with

12   that?

13   A.   I expect that to be a rare exception.

14   Q.   It could happen?

15   A.   Sure, it could.

16   Q.   We already agreed that your estimate's based on 2,177

17   pending claims, right?

18   A.   Approximately the number, yeah.

19   Q.   And you excluded the 1,755 that Mr. Inselbuch talked

20   about?

21   A.   Assigned them zero value, yes.

22   Q.   Now, there, Your Honor, we have Dr. Bates' liability. I

23   think we already saw some of those numbers. But you agree

24   that those numbers generally reflect your existing estimate,

25   correct?

1 A.   Those were the calculations for the several share

2 calculations.

3 Q.   Now I want -- if you were to add back in the 1,755 that

4 you took out because you assume that they have no claim

5 whatsoever, we get a bigger number, wouldn't we?

6 A.   If you add numbers in, you'll get a bigger number than

7 what we have, as long as those are positive numbers.

8 Q.   Let's see that. So now we're back up to $140 million.

9   Now, we had a lot of conversation about the verdict rate

10 and how you used the verdict rate from the 1990s, right?

11 A.   Yes.

12 Q.   Okay. That was before Garlock had been focused -- been a

13 focus in the trial system, right?

14 A.   That's one way to put it.

15 Q.   Because --

16 A.   Before the evidence about -- in terms of the focus of

17 plaintiff was not -- didn't also include the insulation

18 products company.

19 Q.   Right. I think we're all in agreement here. In the

20 1990s the plaintiffs were focusing on the solvent insulator

21 defendants, right?

22 A.   Right. I agree with what Mr. Hanly says, if you focus

23 the attention of your trial on a selected number of

24 defendants, you're going to get an outcome that more likely

25 targets a greater part of the trial risk on them, than on the

1   other co-defendants. That applies symmetrically to them. So

2   you have to account for that in your analysis.

3   Q.   Now I know you don't agree with me, Dr. Bates, and I'm

4   not going to ask you to agree with me.

5   If you were to actually use the verdict rate from the

6   2000s, which we know is a lot higher, that would increase your

7   number too?

8   A.   Sure.

9   Q.   Okay. Let's see that.

10 A.   We also know as well from the tests I did, that it's even

11 less valid than other numbers.

12 Q.   Now, you use an 8 percent verdict rate. Aren't you using

13 a 4 percent verdict rate because you cut out half the claims?

14 A.   I didn't cut out half the claims?

15 Q.   You gave zero values.

16 A.   Claims that do not make it to trial -- claims that do not

17 assert contact against Garlock, should not be in the claim to

18 consider as part of the trial risk, because they won't make it

19 even to trial.

20 Q.   So --

21 A.   So just adding in numbers for making the number

22 bigger it's not --

23 Q.   No, I understand that, Dr. Bates. But I want to use the

24 real numbers that we know we have. So we know we have 4,379

25 pending claims. And we know there's a 36 percent verdict

1   rate, right? We know that?

2   A.   We also know that that number is not the number it should

3   be.

4   Q.   I understand that you believe it's an aberration in the

5   tort system --

6   A.   I'm not sure why you're showing it to me.

7   Q.   Because it's the real data that we have.

8   A.   No. There's nothing real about it when applied to the

9   circumstance of this calculation. It's not real in the

10   slightest.

11   Q.   Now you allocate that 2.78 percent liability share to

12   Garlock, correct?

13   A.   I use -- I allocated the liability amongst multiple

14   parties, yes.

15   Q.   That's based upon the 36 --

16   A.   Based on my analysis of the exposure that the plaintiffs

17   can identify in a comparable way to which they identify the

18   exposure to Garlock.

19   Q.   And that's based upon -- I mean, we talked a lot about

20   Mealey's and verdict samples. But these are verdicts in the

21   tort system, correct, that you looked at to observe it?

22   A.   That's the aggregate amount. That's not the same as the

23   shares.

24   Q.   I understand. But as to the verdicts you looked at, you

25   only looked at 24 verdicts concerning Garlock, right?

1 A.   Well, let me -- there's only a limited number of times

2 the plaintiffs have won against Garlock in the 2,000 times --

3 26,000 times they've named Garlock.

4 Q.   So that's a teeny tiny sample, isn't it?

5 A.   Those are not very many cases of verdict.

6 Q.   Now, for the 2010 -- 2001 to 2010 timeframe, do you agree

7 that the actual liability share is closer to 41 percent?

8 A.   The actual verdict share?

9 Q.   Liability share?

10 A.   No. I don't think that's what the actual liability share

11 is at all.

12 Q.   Okay. We just took this from the debtors' supplemental

13 response. We can get it if you need it. This is from the

14 debtors' information?

15 A.   It's a lot of money for how little the plaintiffs settle

16 for the cases.

17 Q.   But that's what we see from the real-world data, right or

18 wrong, flawed, bad, unfair tort system, mean plaintiffs --

19 A.   No.

20 Q.   -- that's what we see, right?

21 A.   No. That's not real. It's not even real from the

22 real-world data. There is -- it makes no sense that the

23 plaintiffs are settling for what they are if that's what you

24 think their liability share is. No sense.

25 Q.   That's the can opener. That's the assumption, right?

1   A.   No.

2   Q.   You're assuming it makes no sense. But all we're focused

3   on is Garlock's experience --

4   A.   That's the can opener over there.

5   Q.   Dr. Bates, I'm looking at Garlock's experience in the

6   real world to help my client understand what's going to happen

7   in the future.

8   A.   But you're not.

9   Q.   Okay. Assuming that the debtors' supplemental response

10 to the interrogatory showed a 41 percent liability share --

11 A.   I don't know what that is.

12 Q.   The number's $9 billion.

13 A.   There is no number $9 billion that's relevant to anything

14 in here, except to show how absurd that calculation is.

15 Q.   Based upon the real world --

16 A.   Nothing real about it.

17 Q.   Now Dr. Bates, you worked with Garlock for a long time,

18 haven't you?

19 A.   Since 2004.

20 Q.   As a consultant, right?

21 A.   Yes. We've done work for them since 2004.

22 Q.   And in regular contact with them at all levels, senior

23 levels with the lawyers, regular basis, correct?

24 A.   There were a number of people we dealt with from Rick

25 Magee down through folks who worked at Garrison.

1 Q.   They're your client?

2 A.   Sure.

3 Q.   They've been your client for a long time?

4 A.   Yes.

5 Q.   And they paid you millions and millions of dollars,

6 haven't they?

7 A.   Well, we've made -- we've done a lot of work through this

8 bankruptcy which dominates everything.

9 Q.   And you want the best for them, don't you? You want them

10 to preserve as much equity as possible, that's the question.

11 A.   I have no horse in that race one way or the other.

12 Q.   Not at all?

13 A.   No.

14 Q.   Now, would you have been presenting -- would you be

15 presenting this new analysis to the court if it showed

16 $9 billion number? You wouldn't, would you?

17 A.   I don't know. I mean, if I had found $9 billion, I would

18 have calculated $9 billion. How that works through this

19 process, I don't know.

20 Q.   As someone who has been working with the debtors, you're

21 not coming here today to come up with the biggest number

22 possible, are you?

23 A.   Are you suggesting that Garlock asked me to make a small

24 number?

25 Q.   You've actually come up with a small number though,

1 haven't you?

2 A.   I've come up with the number that the analysis showed.

3 Garlock never asked me --

4 Q.   And Dr. Bates, that number is completely different and

5 many, many multiples smaller than the number that you prepared

6 for the debtors the day before they filed for bankruptcy; you

7 would agree with me?

8 A.   I think you've been listening, Mr. Guy. Those two

9 numbers are entirely consistent with each other. They're

10 simply different numbers.

11 Q.   Because they're based upon completely different --

12 A.   No, they're related concepts.

13 Q.   One's observable, right? One's not. One's the idealized

14 world?

15 A.   One's estimable.

16 Q.   And one's the real world?

17 A.   They are different things.

18   MR. GUY: No further questions, Your Honor.

19   THE WITNESS: Thank you, Mr. Guy.

20   MR. GUY: Thank you, sir.

21   THE COURT: A plaintiff's lawyer and a defense

22 lawyer and a statistician go deer hunting. Plaintiff's lawyer

23 shoots and goes five yards to the right. Defense lawyer

24 shoots and goes five yards to the left. Statistician says,

25 got him.

Laura Andersen, RMR 704-350-7493

1   THE WITNESS: Your Honor, my partner Howell White

2   told exactly that same joke every time he played golf with me.

3   But he usually hit the three balls off the T.

4   MR. GUY: I thought you were going to say he had a

5   machine gun.

6   THE COURT: Let's come back at 20 after 2:00.

7   (Lunch recess at 1:18 p.m.)

8   * * * * * *
     UNITED STATES DISTRICT COURT
9   WESTERN DISTRICT OF NORTH CAROLINA
     CERTIFICATE OF REPORTER

10

11   I, Laura Andersen, Official Court Reporter, certify
     that the foregoing transcript is a true and correct transcript
12   of the proceedings taken and transcribed by me.

13   Dated this the 6th day of August, 2013.

14

15   s/Laura Andersen
                                  Laura Andersen, RMR
16   Official Court Reporter

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                    Laura Andersen, RMR 704-350-7493